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(19,460 and 19,461).

Supreme Court of the United States.

OCTOBER TERM, 1904.

The Scottish Union and National Insurance Company,
Appellant,

vs.

Willis G. Bowland, as Treasurer, and L. Ewing Jones, as Auditor of Franklin County, Ohio; Arthur I. Vorys, as Superintendent of Insurance, and William S. McKinnon, as Treasurer of the State of Ohio,
Appellees.

No. 360.

Willis G. Bowland, as Treasurer, and L. Ewing Jones, as Auditor of Franklin County, Ohio, et al.,
Appellants,

vs.

The Scottish Union and National Insurance Company,
Appellee.

No. 361.

Appeals from the Circuit Court of the United States for the Southern District of Ohio.

BRIEF FOR WILLIS G. BOWLAND et al., APPELLEES, IN CAUSE No. 360, AND APPELLANTS IN CAUSE No. 361.

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(19,460 and 19,461).

Supreme Court of the United States.

OCTOBER TERM, 1904.

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY,

APPELLANT,

vs.

WILLIS G. BOWLAND, AS TREASURER, AND L. EWING JONES, AS AUDITOR OF FRANKLIN COUNTY, OHIO; ARTHUR I. VORYS, AS SUPERINTENDENT OF INSURANCE, AND WILLIAM S. MCKINNON, AS TREASURER OF THE STATE OF OHIO,

APPELLEES.

[No. 360.]

STATEMENT OF THE CASE.

These causes come into this court upon appeal from a decree of the Circuit Court of the United States in a case in which two statutes of the State of Ohio were claimed to be in contravention of the Constitution of the United States. A full statement of the facts in cause No. 360 will make it unnecessary to add anything in reference to cause No. 361. All of the questions involved in the consideration of the appeal of The Scottish Union and National Insur-

ance Company from the decree below will be presented together, leaving for separate consideration at the end of this brief such additional questions as are necessary to be considered by the appeal of Bowland et al. in cause No. 361.

The Scottish Union and National Insurance Company is incorporated under the laws of and is a resident of Great Britain. In order to comply with the laws of the State of Ohio (Section 3660, Revised Statutes, Appendix *a*), regulating the admission of foreign insurance companies to do business within that State, and as one of the conditions to its right to so conduct its business, it deposited and maintained on deposit, with the Superintendent of Insurance, and the Treasurer of the State of Ohio, at the office of said treasurer at Columbus, in Franklin county, Ohio, $100,000 of municipal bonds during the years 1895 to 1903, inclusive. Said bonds were not returned for taxation in the State of Ohio by the owner thereof, or by any one acting for such owner for either of said years 1895 to 1903, inclusive. (Record, p. 3.)

On the ninth day of October, 1900, the Auditor of Franklin county, Ohio, under the provisions of Section 2781*a*, Revised Statutes of Ohio (Appendix *b*), entered upon the tax list of said county in the name of The Scottish Union and National Insurance Company, taxes for and on account of said municipal bonds belonging to said company for each of the years 1895 to 1900, inclusive. On the eleventh day of December, 1903, said auditor entered in the same manner and by the same authority, upon said tax list taxes for and on account of said bonds, for each of the years 1901 to 1903, inclusive. (Record, pp. 4, 5.)

On the second day of April, 1903, said municipal bonds were withdrawn from deposit with the Superintendent of

Insurance and Treasurer of State and in their stead were substituted on said deposit $100,000 of bonds of the United States of America as provided by Sec. 3660, Revised Statutes of Ohio. (Record, p. 2.) The United States bonds so substituted by The Scottish Union and National Insurance Company for said municipal bonds are still on deposit with Arthur I. Vorys, as Superintendent of Insurance, and William S. McKinnon, as Treasurer of the State of Ohio, and are still owned by said company. (Record, p. 4.)

L. Ewing Jones, as Auditor, has certified for collection to Willis G. Bowland, as County Treasurer of Franklin county, Ohio, all of the taxes listed in the name of The Scottish Union and National Insurance Company for said years 1895 to 1903, inclusive. Said Bowland, as Treasurer, acting under Section 1095 of the Revised Statutes of Ohio (Appendix *c*), proceeded to and will collect, unless restrained by order of court, said taxes by distraint against any goods and chattels belonging to The Scottish Union and National Insurance Company found within Franklin county, Ohio. Said Treasurer was about to take sufficient of the bonds of the United States deposited with the Superintendent of Insurance, and Treasurer of the State of Ohio by said company, to pay the taxes remaining due and standing charged in the name of said company upon the duplicate; the Superintendent of Insurance and Treasurer of State were about to deliver sufficient of said bonds to said Bowland, as Treasurer, in obedience to his demand of distraint under said statute. Said Bowland, as Treasurer, was also proceeding under Section 2859 of the Revised Statutes of Ohio (Appendix *d*) to collect said taxes by civil action against said company, and had obtained service under Sec-

tion 3657 of the Revised Statutes of Ohio (Appendix *e*), which required any foreign company desiring to transact business in the State of Ohio to consent to service of process in that State.

It is conceded that the taxes charged upon the list and duplicate can be collected but once, but the Treasurer, unless restrained by law, will put into operation every provision of law enacted by the Legislature of Ohio for such collection until said taxes are ultimately covered into the county treasury.

The bill of complaint filed in the Circuit Court prayed for an injunction restraining Bowland, as Treasurer, from collecting or attempting to collect any of said taxes against complainant, the insurance company, either by a civil action under Section 2859, or by distraint, under Section 1095 of the Revised Statutes of Ohio, of the bonds of the United States deposited with the Superintendent of Insurance and Treasurer of State, or of any other property of complainant which might be found in Franklin county, and restraining Arthur I. Vorys, as Superintendent of Insurance, and William S. McKinnon, as Treasurer of State, from delivering to said Bowland, as Treasurer, said bonds of the United States on deposit with them or any part of them.

The case was submitted upon special demurrers of Bowland, as Treasurer, and Jones, as Auditor, of Franklin county, Ohio (Record, p. 13), and Vorys, as Superintendent of Insurance, and McKinnon, as Treasurer of State (Record, p. 16), to the bill of complaint, said demurrers having been substituted for those shown at pages 9 and 11 of the Record. (Entry, Record, p. 21.) In deciding the case below the Circuit Court sustained the demurrers to so

much and such parts of the bill of complaint as sought to restrain the defendant, Bowland, as Treasurer, from collecting taxes for the years 1895 to 1902, inclusive, by distraint, under the provisions of Section 1095 of the Revised Statutes of Ohio, out of the United States bonds deposited as alleged in the bill, and sought to restrain Vorys, as Superintendent of Insurance, and McKinnon, as Treasurer of the State of Ohio, from surrendering to the defendant, Bowland, as Treasurer of Franklin county, said United States bonds or sufficient of them to pay the taxes for the years 1895 to 1902, inclusive, and the costs of said distraint. The prayer of the bill in that behalf was denied. From this part of the decree, complainant appealed and the appeal is docketed in this court as cause No. 360, October Term, 1904. (Record, p. 21.)

At the same time, the court overruled the demurrers to so much and such parts of the bill of complaint as sought to restrain Bowland, as Treasurer, from collecting or attempting to collect said taxes by civil action under the provisions of Section 2859 of the Revised Statutes of Ohio; and to so much and such part of said bill as sought to restrain Bowland, as Treasurer, from collecting taxes for the year 1903, by distraint or otherwise, and as sought to restrain the Superintendent of Insurance and Treasurer of State from surrendering sufficient of said United States bonds under the threatened distraint to pay said tax charged for said year 1903. From this part of said decree the defendants appealed and their appeal is docketed in this court as cause No. 361, October Term, 1904. (Record, pp. 22, 23.) The assignments of error upon that appeal will be discussed separately at the end of this brief.

At the same time that the taxes complained of in this cause were placed upon the tax list by the Auditor, on account of bonds deposited with the Superintendent of Insurance by The Scottish Union and National Insurance Company, like action was taken in reference to bonds deposited by fourteen other foreign insurance companies, under a similar state of facts. Taxes amounting to $180,000 were placed upon the tax list on this account and a duplicate thereof certified to the Treasurer for collection.

The litigation growing out of the assessment and attempt to collect taxes from these companies has continued during the past four years. Different questions as to the procedure of the officials of Franklin county charged by law with the duty of collecting public revenue have been argued and submitted before the same judge, Judge Thompson, who heard and decided this case, six different times. At the beginning of the litigation, bills in equity were filed by three of the companies questioning the right of the State to tax bonds so deposited by a foreign insurance company. One of these cases was decided against the company and taken on appeal to the Circuit Court of Appeals, where the decree of the Circuit Court was affirmed and the bonds were held to be properly taxable in Ohio. *Western Assurance Company v. Halliday,* 126 Fed. Rep., 257. A petition for a writ of *certiorari* was filed in this court and denied March 21, 1904, 193 U. S., p. 673. Thereafter on the twentieth day of April, 1904, bills of complaint praying for injunctions restraining the collection of said taxes were filed in the Circuit Court by each of the fourteen companies of which the appellant in this cause was one. The present case is practically a subsequent step in the same litigation com-

menced by The Western Assurance Company v. Halliday, as Auditor, noted above, and is a test case, the decree in which will be decisive of most, if not all, of the remaining cases of like nature now pending in the Circuit Court.

On the hearing of this case in the Circuit Court, therefore, the judge before whom it was argued assumed as settled, by the decision in the case of The Western Assurance Company v. Halliday, the proposition that the bonds deposited as required by Section 3660, Revised Statutes of Ohio, had a taxing situs in Ohio, and were properly listed for taxation for the years 1895 to 1902, inclusive. That question was not argued by counsel, although it was properly presented by the pleadings, and the attention of the court was directed particularly to a consideration of the following allegations in the bill:

> That in so far as Section 1095, Revised Statutes of Ohio attempts to give the defendant, Bowland, as County Treasurer, the right and power of collecting said taxes against complainant by distraint, of the goods and chattels belonging to the complainant, even if the same be found in Franklin county, it is unconstitutional and void, and any effort on the part of said Bowland, as Treasurer, to distrain said bonds of the United States, or other personal property of complainant, and any effort on the part of Arthur I. Vorys, and William S. McKinnon, or either of them to deliver to said Bowland, as Treasurer, either upon his demand, or otherwise, the said bonds of the United States, or any of them, deposited with the Superintendent of Insurance, would be without due process of law and in violation of the Fourteenth Amendment of the Constitution of the United States, and of the treaty rights of the complainant as a subject of Great Britain;

and

> That in so far as Section 2859 of the Revised Satutes of Ohio attempts to give a right to collect said taxes

> from complainant by a personal judgment, it is unconstitutional and void, and any attempt on the part of appellant, as Treasurer, to collect said taxes against complainant personally would be in violation of the Fourteenth Amendment of the Constitution of the United States and the treaty rights of complainant as a subject of Great Britain.

The right of the State to tax said bonds and the legality of the levy of taxes having been passed upon before by the court below, the question considered in this case related solely to the right of the taxing official to collect the taxes so levied under the laws of Ohio, enacted for enforcing the collection of taxes. The language of the opinion (Record, p. 18), was directed mainly to the statutory proceeding of destraint sought to be enforced by the Treasurer in collecting these taxes. It was not contended that the taxes can be collected more than once, however many methods of collection may be provided by law. The court having refused to restrain the Treasurer from collecting said taxes by distraint, under Section 1095 of the Revised Statutes of Ohio, and taking it for granted that collection would be enforced in that way, was not inclined to pass on the validity of Section 2859, but complying with the wishes of all parties to these cases that every question presented by the pleadings be passed on, held said section invalid so far as it authorized a personal judgment against a non-resident of the State upon a claim for taxes. The court further held that the taxes assessed for 1903 could not be legally levied under Section 2737 (Appendix *f*) because said municipal bonds were not converted into government bonds for the purpose of evading or escaping taxation.

The case was disposed of upon the demurrers to the bill of complaint and being one in which two statutes of the

State of Ohio above mentioned were claimed to be in violation of the Constitution of the United States, appeals were taken by both sides directly to this court.

ARGUMENT.

I.

The bonds deposited with the Superintendent of Insurance by Foreign Insurance Companies under Section 3660, Revised Statutes of Ohio, have a situs for taxation in Ohio, and were properly listed for taxation in Franklin County.

It is alleged in the bill of complaint (Record, p. 5), that

> "Said municipal bonds were not taxable in said Franklin county during the years 1895 to 1903, inclusive, or any of such years under any law of the State of Ohio";

and in the third assignment of error (Record, p. 26), it is claimed that

> "Said Circuit Court erred in finding, ordering, adjudging and decreeing that the said pretended taxes as alleged in the bill of complaint which were levied for the years 1895 to 1902, inclusive, were legally levied for each of said years upon said municipal bonds as alleged in the bill."

Although the question as to the right of the State to tax said bonds and the legality of the tax levy, thus made on the record, was not urged before the Circuit Court at the time the case was argued and decided, because that question had been decided by the same judge, upon a like state of facts, in the case of The Western Assurance Company v. Halliday, 110 Fed. Rep., 259, affirmed by the Circuit Court

of Appeals, 126 Fed. Rep., 257, and the decision of that court left undisturbed by this court in an application for a writ of *certiorari,* 193 U. S., 673, the contention of counsel that that decision is not binding in this case, and that the question is now before this court for decision, makes it necessary to include in this argument a brief outline of authorities relied upon by appellees on that point.

(a) Investments in bonds have a taxing situs apart from the domicile of the owner and are taxable where found.

The jurisdiction of Ohio for taxing purposes does not extend to subjects outside of the State. There must be jurisdiction of either property taxed or of its owner. But appellant is a corporation organized under the laws of Great Britain, and its legal domicile, is, therefore, in Great Britain. According to a fiction of the law personal property is regarded as having only the domicile of the owner. It is a well recognized exception to the maxim *mobilia personam sequuntur,* that for purposes of taxation it is entirely competent for the local law to disregard the domicile of the owner and subject to taxation all movables according to their situs.

Municipal bonds are in such a concrete tanglible form that they are subject to taxation where found, irrespective of the domicile of the owner, and a State has the right to tax such bonds whenever they can be localized within its jurisdiction.

State Tax on Foreign Held Bonds, 15 Wall., 300.
Savings Loan Society v. Multnomah Co., 169 U. S., 421.
New Orleans v. Stemple, 175 U. S., 309.
Bristol v. Washington Co., 177 U. S., 133.

Blackstone v. Miller, 188 U. S., 189.
Board of Assessors v. Comptoir National, 191 U. S., 388-403.
Carstairs v. Cochran, 193 U. S., 10.
Lee v. Sturges, 46 Ohio St., 153.
Hubbard v. Brush, 61 Ohio St., 252.

"This exercise of the power of taxation according to both the actual fact of the situs and according to the fiction of the domicile of the owner, though inconsistent and seemingly unjust, does not infringe the constitutional authority of the State, for in the one case it attains its end through its power over the property itself and in the other through its authority over the owner."

Western Assurance Co. v. Halliday, 126 Fed. Rep., 257, 259.

"Where personal property is located within the State, whatever its form, whether evidences of debt, or otherwise, it may be subjected to the State's taxing power, irrespective of the residence of the owner. Thus the State may establish an independent *situs* for taxation of bonds, mortgages and other securities of non-resident owners, located in its jurisdiction."

Judson on Taxation, Section 394.

"It is well settled that bank bills and municipal bonds are in such a concrete tangible form that they are subject to taxation where found, irrespective of the domicile of the owner; are subject to levy and sale on execution, and to seizure and delivery under replevin. Notes and mortgages are of the same nature."

New Orleans v. Stemple, 175 U. S., 309.

"A State has the undoubted power to tax private property, having a situs within its territorial limits, and may require the party in possession of the property to pay the taxes thereon. * * * Statutes sometimes provide that tangible personal property shall be assessed wherever in the State it may be, either to the

owner himself or to the agent or other person having it in charge; and there is no doubt of the right to do this, whether the owner is resident in the State or not."

Carstairs v. Cochran, 193 U. S., 10, 16.

The bonds in question deposited in Franklin county Ohio, with the Superintendent of Insurance, and Treasurer of State, were personal property located within the State, and as such had a situs for taxation in said State, notwithstanding the fact that the domicile of the owner was elsewhere.

(b) Under the Constitution and Statute Law of Ohio, investments in bonds held in that State and owned by non-residents of the State, are taxable within the State.

The Constitution of Ohio in Section 2, of Article XII, provides as folows:

> "Laws shall be passed, taxing by uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies or otherwise; and also all real and personal property according to its true value in money," and
>
> "That personal property to an amount not exceeding in value two hundred dollars for each individual may, by general laws, be exempt from taxation."

Sec. 3 of Article XIII of the Constitution provides:

> "The property of corporations, now existing or hereafter created, shall forever be subject to taxation the same as property of individuals."

Prior to the adoption of the present Constitution in 1851, the act of the Legislature of 1846 (44 Ohio Law, 85), provided that:

> "All property, whether real or personal within the State, and the moneys and credits of *persons residing*

therein, except such as is hereinafter expressly exempted, shall be subject to taxation; and such property, moneys and credits or the value thereof, shall be entered on the lists of taxable property, for that purpose."

Under that section of the statutes only credits of persons residing within this State were taxable, but by the adoption of the provision of the Constitution of 1851 above quoted, the people of Ohio extended the taxing power of their sovereignty so as not to limit the scope of taxation in Ohio to investments in bonds belonging to persons *residing within the State*. The result is that all investments in bonds, whether belonging to persons residing within the State or elsewhere, if found within its jurisdiction are subject to taxation.

Section 2744 of the Revised Statutes of Ohio (Appendix *g*) provides how corporations shall list their property.

> "The president, secretary, and principal accounting officer of every * * * insurance company * * * excepting banking or other corporations whose taxation is specifically provided for, for whatever purpose they may have been created, whether *incorporated by any law of this State or not*, shall list for taxation, verified by the oath of the person so listing, *all the personal property, which shall be held to include* all such real estate as is necessary to the daily operations of the company, moneys and credits in such company or corporations, within the State, at the actual value in money, in the manner following * * *"

Section 2734 of the Revised Statutes of Ohio (Appendix *h*) provides that:

> "Every person of full age and sound mind shall list the personal property of which he is the owner, and all moneys in his possession * * * controlled by him, as agent or attorney, on account of any other

person or persons, company or corporation whatsoever," etc., and farther down in the section,

"The property * * * of every company, firm, or corporation, by the president or principal accounting officer, partner or agent thereof, and all surplus or undivided profits held by any society for savings or bank having no capital stock, by the president or principal accounting officer."

Section 2735 of the Revised Statutes (Appendix *i*) provides where personal property shall be listed:

* * * "All personal property, moneys, credits, and investments, except as otherwise specially provided, shall be listed in the township, city, or village in which the person to be charged with taxes thereon may reside at the time of the listing thereof, if such person reside within the county where the same are listed, *and if not, then in the township, city, or village where the property is when listed.*"

Section 2737 of the Revised Statutes (Appendix *f*) provides what property shall be listed and includes the language:

"15th. The amount of all moneys invested in bonds, stocks, joint stock companies, annuities, or otherwise."

Section 2746 of the Revised Statutes (Appendix *k*) provides in whose name property shall be listed:

"Personal property of every description, moneys and credits, investments in bonds, stocks, joint stock companies, or otherwise, shall be listed *in the name of the person who was the owner thereof* on the day preceding the second Monday of April, in each year."

Section 2745 of the Revised Statutes (Appendix *l*) provides for the returns to be made by foreign insurance companies, and provides a system of taxation for such com-

panies which is in addition to all other subjects of taxation provided for by the general statutes.

These various sections of the statutes of Ohio comprise the taxing machinery of the State so far as the returns of the property of corporations for taxation is concerned and it is obvious when considered together that the intent and purpose of the legislation is to subject to taxation every form of personal property having a situs in this State, including such forms of personal property as money, credits, bonds and stocks. If they are owned by a person residing in Ohio, they are subjected to taxation without regard to the place of their deposit or lodgment, but if not owned by a person residing in the State their taxability is made to depend upon their being held in the State by some one residing therein, who holds and controls the same for a non-resident owner as agent or otherwise. In the one case Ohio exercises its power to tax by reason of the presence of the property within the State, and in the other by virtue of the domicile of the owner and the saying *mobilia sequuntur personam*. That this is a proper construction of the Ohio statutes, has been held by the Supreme Court of Ohio in *Lee v. Sturges*, 46 Ohio St., 153 and *Hubbard v. Brush*, 61 Ohio St., 252.

In *Hubbard v. Brush*, cited above, the case turned upon the question as to whether the credits of a foreign corporation doing business in Ohio were taxable in that State. The syllabus of the case, which is the authoratative part of the decision under the rule of the Ohio court, reads as follows:

> "Choses in action, whether book accounts, promissory notes, or the like, of foreign corporations that are kept in this State and arise out of the corporate business transacted here, are subject to taxation under the provisions of Section 2744, Revised Statutes."

It was contended in that case that the corporation was one created by the law of another State and that its intangible personalty such as book accounts, notes, etc., had no situs except that of the domicile of the corporation Judge Bradbury in referring to this, said on p. 263:

> "Does that situs for all purposes adhere to the corporate residence, or may choses in action, having the relation, connection and situation in which these were found, be held to possess such a situs in this State as will clothe the State with jurisdiction over them for taxation? The State attempts by Section 2744, Revised Statutes, to assert and exercise such power or jurisdiction. * * * We perceive no reason for denying to the State the power asserted by this section. If men choose to resort to another State or country for authority to organize a corporation for the purpose of engaging in business in this State, or if that was not their original purpose, choose afterwards to plant themselves herein, and in either case transact the corporate business and hold the corporate property wholly within our borders, and enjoy the protection of our laws, it is only just and reasonable that its property should be subject to taxation herein as fully as if its organization had been effected under our own laws, and the right of taxation should not be defeated nor limited upon the ground that for some other purpose the situs of a part of its property should be regarded as being in the State or country where the corporation was organized.
>
> "Where foreign corporations voluntarily bring their property and business into this State to avail themselves of advantages found here which they believe will enhance the probabilities that the business they intend to pursue will be profitable, they should not be heard to complain of laws which tax them as domestic corporations are taxed by the State. We hold, therefore, that the provisions of Section 2744, which make it the duty of foreign corporations to list for taxation in this State, their choses in action where they are held within this State and grow out of the business they conduct

herein, is a valid exercise of the taxing powers vested in the State. This holding finds support in many adjudications, among which may be cited *The People ex rel. v. The Village of Ogdensburg*, 48 N. Y., 390; *Redmond v. Commissioner*, 87 N. Car., 122; *State ex rel Taylor, Adm'r., v. St. Louis County Court*, 47 Mo., 594."

In speaking of Section 2 of Article XII of the Constitution, in the case of *Lee v. Sturges*, 46 Ohio St., 153, Judge Spear says (p. 159):

> "It is clear that the purpose of Section 1 is to tax *all* investments in stocks held within the State. This we are bound to assume, for every presumption is in favor of that construction of the law which gives effect to the requirement of the section of the Constitution referred to, and we are forced to the conclusion that the General Assembly, in enacting this law, intended, so far as the complex nature of human business affairs should make it practicable, to include within the taxing provision *all* property within the State," etc.

It has been claimed by our opponents that the Supreme Court of Ohio has announced decisions inconsistent with the right of the State to tax the bonds in question, citing the cases of *Worthington v. Sebastian*, 25 Ohio St., 1, and *Grant v. Jones*, 39 Ohio St., 506. In Grant v. Jones, it was sought to subject to taxation certain mortgage notes for money loaned in Ohio and secured by Ohio land mortgages. The notes were made to a peddler who had no domicile in Ohio, but occasionally came into the State in pursuit of his avocation, who on such trips put out his accumulations in loans and collected his interest. It was plainly a case where neither creditor nor his notes had a status in Ohio. A quotation from the opinion in that case is made use of as follows (p. 514):

> "Our statute clearly adopts that rule. Whenever the person holding such choses in action resides in Ohio, he must list for taxation such credits, whether he holds them as owner, guardian, trustee or agent. If they are held within the State in either capacity they are within the jurisdiction of the State for purposes of taxation. If they are not so held, but are owned and held by a non-resident, they are not subject to taxation."

The right to tax in that case rested upon the claim of the State that Patrick Grant, the plaintiff, was a resident of Butler county, Ohio, and it was not claimed that the evidences of debt belonging to Grant were likewise within said township, except by virtue of his residence therein. The dictum above quoted from the decision in that case therefore, is not authoritative, and the language used was not intended to support the proposition for which our opponents contend.

The case of *Worthington v. Sebastian*, 25 Ohio St., 1, is authority simply for the proposition that investments in bonds and stocks of foreign corporations owned by residents of Ohio, are taxable in Ohio; but that investments in bonds owned by persons not residents in Ohio, are not taxable in such State, is by no means a logical corollary of that proposition.

In the foregoing argument we have used with freedom the language of the learned judge who delivered the opinion in the case of *The Western Assurance Company of Toronto v. Halliday et al.*, 126 Fed. Rep., 257, and we quote further from that opinion, the following language on page 265:

> "We are unable to find that the words 'personal property' as used in Section 2744, are used in so restricted a sense as to exclude from taxation such tangible personal property as municipal securities which represent

the capital stock of a foreign insurance company lodged within the State for the security of Ohio policy holders. The construction we reach is consistent with the policy of the State as indicated by the constitutional provision requiring the equal taxation of all property within its jurisdiction, and it also meets the reasonable requirement that all property within the State which receives the benefits and protection of government should share in the burdens of government. We are the more content with this conclusion when we consider that the construction contended for would apply equally to domestic insurance companies required to list their property under this same section of the statutes, such companies are required by Sections 3634, 3637, 3640, Revised Statutes, to invest their capital in certain classes of bonds. If foreign insurance companies are not required to list bonds held by them in the State, neither are such domestic companies. In such case the exemption extended to the shares in domestic companies, whose capital stock is taxed in the name of such companies, by Section 2646, would be lost."

And again, on p. 266:

"The bonds are taxable, and in default of such return the Auditor of Franklin county was right in assessing them as wrongly omitted. Inasmuch as this company has no general office in Ohio, but conducted its business through local agents, each under direction of its home office, these bonds were properly assessed where found."

The taxation of bonds deposited by foreign corporations with the State Treasurer has been under consideration in the case of *Nelson A. Sims v. Catherina Best et al.*, 25 Ohio Circuits Decisions, p. 149. It was decided in that case:

"The Treasurer of State is not a trustee or owner of the bonds and securities deposited with him by a foreign investment company under Section 3821 *r*, Revised Statutes, as a condition precedent to doing business in this State, although they may be applied to

> the payment of corporate debts at the instance of creditors. Hence, as the bonds and securities so deposited remain the property of the corporation, they must be listed for taxation by it under Section 2735, Revised Statutes, in the county within the State where it has its main office and principal place of business."

The decision in this case was affirmed by the Supreme Court of Ohio, without report, under the title of *Heintz et al. Rec'rs v. Cameron et al.*, 70 Ohio St., 491. Heintz et al. were appointed receivers of the Interstate Savings Investment Company, and brought suit against Cameron, as Treasurer of State, to subject bonds, deposited with him under Section 3821r, Revised Statutes of Ohio, to the payment of claims of creditors. Sims, as Treasurer of Franklin county, filed a cross-petition for taxes levied on account of said bonds having a taxing situs in Franklin county. The decision of the case was reported in the Circuit Court of Ohio under the title of Sims, Treas., v. Catherina Best et al., but the title in the Supreme Court of Ohio is Heintz et al. v. Cameron et al.

In that case the Interstate Savings Investment Company was a corporation organized under the laws of the State of West Virginia. Its main office and principal place of business was in fact and by the terms of its incorporation in Cincinnati, Hamilton county, Ohio. It was admitted that the bonds were taxable in Ohio. The only point raised in the courts was whether the bonds should be returned for taxation by the company at its home office in Hamilton county, or in the county where the safe of the Treasurer of the State was and where the bonds were required to be kept, to wit, Franklin county. It was decided on the authority of *Pelton v. Transportation Company*, 37 Ohio

St., 450, that the residence of the Interstate Savings and Investment Company was its main office within the State of Ohio, in Hamilton county, and that the bonds should have been returned by the owner thereof in that county.

In the case at bar, however, the non-resident corporation has no principal office within the State of Ohio, but on the other hand, its chief office in the United States is in the city of Hartford, State of Connecticut, from which office it conducts all its business in the State of Ohio. (Record, p. 2.)

Under Section 2735 of the Revised Statutes (Appendix *i*), The Scottish Union and National Insurance Company was not a resident of the State of Ohio, and the property was required to be listed in the taxing jurisdiction where the property was when listed, or when the same should have been listed. The case of *Sims v. Best* above cited, is authority for the proposition that the bonds silimlar to those deposited by the Scottish Union and National Insurance Company are taxable in Ohio. But from the nature of the facts in the case, it is not authority upon the point as to where the bonds deposited by said insurance company should be returned for taxation.

(c) The nature of the deposit required by Section 3660 of the Revised Statutes of Ohio, as amended February 27, 1894, is not such as to exempt bonds so deposited from taxation within the State.

It is claimed by appellant that the county and municipal bonds authorized to be deposited under Section 3660, Revised Statutes, by the amendment of said section on February 27, 1894 (91 Ohio Laws, p. 40), were to be deposited for the sole purpose of securing the policy holders

of the company depositing such bonds, and that it was not the intention of the legislature that such bonds should be taxable.

Prior to the amendment of said section in 1894, bonds of the United States and of the State of Ohio were permitted to be deposited under said section. By the amendment thereof, municipal bonds of counties and cities in the State of Ohio were permitted to be deposited.

Even if the legislature had intended that the deposit of such bonds should be exempted from taxation within the State, it was beyond its power to pass a law for that purpose. The Constitution of Ohio, in Section 2 of Article XII, requires that all bonds must be taxed by uniform rule and the exemption from taxation of any property brought within the State of Ohio for any purpose whatever would be unconstitutional and void under this section of the Constitution. The bonds so deposited are employed in carrying on the business of these insurance companies. No foreign or domestic fire insurance company will be permitted to carry on business at all within the State until they have this capital stock invested in bonds as a security to the policy holders. Bonds so deposited furnish the security which enables foreign companies to procure business, aside from the fact that the law will not permit them to do business unless they have such capital stock. They would fail to obtain business unless they had a credit which would inspire confidence, and this deposit not only serves the purpose of the law, but in part at least furnishes the credit upon which the business is done.

Bonds were deposited under a similar law with the comptroller of the State of New York by a foreign insurance

company and the question of the right of the State to tax such bonds was raised by the company in the case of *The British Commercial Insurance Company v. Commissioner of Taxes*, 18 Abb. Pr. Rep., 118. In that case it was held:

> "A foreign corporation is liable to taxation on money invested by them in securities (other than United States stocks) which are deposited with the comptroller of the State, as a condition of their being allowed to do business as an insurance company here, as prescribed by the act of 1853. For it is money invested in their business, within the meaning of the act of 1855."

The Court (Ingraham, J.) in its opinion, on p. 130, says:

> "The other question is, whether the plaintiffs are liable to be taxed upon the bonds of the city of Buffalo deposited with the comptroller. There can be no doubt but that those bonds are included under the term personal estate as used in the statute, and the only question which can arise is whether it is property invested in any manner in the business which they carry on. Upon this point there can be but little doubt. The statute prohibits any foreign corporation from carrying on business of life insurance until such company have deposited with the comptroller securities to the amount of $100,000 for the benefit of policy holders of the company. This deposit with the comptroller is necessarily made in connection with the business of the company; without it they can do no business, and it is so deposited as to be security to those who may hold policies of the company. It is, therefore, used in the business of the company, and in fact forms its capital in this State, which is liable to the creditors, and comes within the definition of capital, as defined in the *Mutual Insurance Company v. Supervisors of Erie*, (4 Comstock, 442). These securities so deposited with the comptroller, form the same kind of capital as that of a domestic corporation incorporated for similar purpose, in which the capital is the security for those who deal with it. Neither is actually invested in business and used for that purpose, but both form the basis on which the business is transacted, and the security from

which payment of claims is to be enforced. So far as the assessment was made on the bonds of the city of Buffalo, the same was properly made."

The taxation of bonds deposited under statutes similar to Section 3660, Revised Statutes of Ohio, has been under consideration in a number of cases. Although such statutes are enacted for the protection of policy holders in the several states, yet as respects taxation, such bonds belonging to non-residents of the State are uniformly held to be assessed and taxed within the State where deposited.

The International Life Ins. Soc. v. The Com. of Taxes, 28 Barbour (N. Y.), p. 318.
People v. The Home Ins. Co., 29 Cal., 533.
Simsm v. Best et al., 25 Ohio Circuits Decisions, p. 149, affirmed under title of Heintz et al. Rec'rs v. Cameron et al., 70 Ohio St., 491.

The bonds deposited with the Superintendent of Insurance and Treasurer of the State of Ohio are within the State of Ohio as an investment of that part of the capital of the insurance company employed in carrying on business within the State, and the Constitution of Ohio requires that they shall be subject to taxation.

(d) Section 2745 of the Revised Statutes of Ohio provides a method of taxation for Foreign Insurance Companies in addition to the General Statutes authorizing the levy of taxes, and the Legislature of Ohio had no power to substitute a special method of taxation for the provision of the General Laws relating thereto.

It is contended that the taxation of foreign insurance corporations is specifically provided for by Section 2745 of the Revised Statutes (Appendix *l*), that the provisions of said section constitute an exclusive method of taxation

for foreign insurance companies. In answering this contention, Lurton, J., in the opinion in *Western Assurance Company v. Halliday*, 126 Fed. Rep., p. 266, said:

> "But this is a provision for tax on a business, and is imposed only upon the current premium receipts in the State, less certain commissions, expenses and dividends paid within the State. It is plainly not a property tax at all, and is such a tax as might well be imposed upon foreign companies as a condition of doing business, leaving the question of a property tax to be governed by other and general provisions of law."

Under the Constitution of Ohio, the Legislature did not have the power to exempt any property within the State from the general statutes of the State relating to taxation. The requirement in the Constitution that 'laws shall be passed taxing by uniform rule *all* property' made it impossible for the Legislature to substitute the provisions of Section 2745, Revised Statutes, for those of Section 2744. It is a well settled rule of construction that statutes which strip a government of any portion of its prerogative or gives exemption from the general burden, should receive a strict interpretation.

> 1 *Desty on Taxation*, 180.
> *Yazoo, etc., Ry. Co. v. Thomas*, 132 U. S., 174.
> *New Orleans, etc., Ry. Co. v. New Orleans*, 143 U. S., 192.
> *Chicago B. & K. C. Ry. v. Guffey*, 120 U. S., 569.
> *Phoenix Ins. Co. v. Tennessee*, 161 U. S., 174-177.

> "It being settled law that the language by which a State surrenders its right of taxation, must be clear and unmistakable, a grant by one State to a corporation of another State to exercise a part of its franchise within the limits of the State making the grant, as above said, and laying a tax upon it at the time of the

grant, does not, of itself, preclude a right of further taxation by the same State."

Erie Railway Company v. Pennsylvania, 21 Wall., 492.

"Before any exemption or limitation from State taxation can be admitted the intent of the Legislature to confer the immunity or prescribe the limitations must be clear beyond a reasonable doubt."

The Delaware Railroad Tax, 18 Wall., 206.

If the enactment of Section 2745 (Appendix *I*) was intended as the only method of taxation for foreign insurance companies, it was a deliberate attempt on the part of the Legislature to provide a special mode of taxation in lieu of any other mode, and in effect an express exemption from taxation of all the property of these corporations, other than the gross premium receipts, within the State, or that might thereafter come into the State. But the Legislature of Ohio has no power to exempt any property from taxation that is not specifically exempted by the Constitution.

The conclusion must follow that the bonds specified in the bill of complaint should have been returned for taxation by the owner thereof within the State of Ohio, and that upon the failure of the person required to list the same for taxation, it was the duty of the taxing officers of Franklin county to place said bonds upon the duplicate of said county under the provisions of law enacted for that purpose.

II.

The privilege exercised by appellant under Section 3660, Revised Statutes, to substitute bonds of the United States in exchange for the municipal bonds upon deposit with the Superintendent of Insurance, leaves the bonds so substituted and exchanged subject to all the obligations against the property originally on deposit; and appellant, in obedience to said Statute must comply with all the Laws of the State of Ohio.

Municipal bonds were deposited by The Scottish Union and National Insurance Company with the Superintendent of Insurance and Treasurer of the State of Ohio, and remained on deposit until the second day of April, 1903, when they were wholly withdrawn from such deposit and removed from the State of Ohio. In the place of said municipal bonds appellant substituted $100,000 of bonds of the United States under the provisions of section 3660, Revised Statutes of Ohio (Appendix *a*). Upon application of appellant, and upon receipt from it of said bonds of the United States so exchanged, substituted and deposited in lieu thereof, said Superintendent of Insurance, by virtue of said statute, permitted the withdrawal of said municipal bonds by appellant. (Record, p. 2.).

The appellant, as a foreign insurance company, had no right to do business in the State of Ohio without permission. The State had the right at all times to fix by law the terms and conditions in compliance with which any non-resident might be permitted to do business within its borders. The conditions fixed by law in the State of Ohio, with which appellant was required to comply in order to carry on its busi-

ness within that State, are contained in section 3660 of the Revised Statutes (Appendix *a*).

Appellant proceeded to comply with said statute and deposited the bonds required to be deposited, and commenced and continued to carry on its business in said State during all the years 1895 to 1903, inclusive. It is still doing business within the State. It thereby accepted the terms and conditions imposed by the laws of Ohio upon it in return for this privilege.

Among other things, said section 3660 provides:

> "The stocks and securities so deposited may be exchanged from time to time for other like securities; so long as the company so depositing continues solvent *and complies with the laws of this State* it shall be permitted by the Superintendent to collect the interest or dividends on such deposits."

When appellant decided to come into this State it of necessity accepted the conditions thus imposed upon it by law and virtually agreed to comply with the provisions of the statute and with all the laws of the State of Ohio. It was bound to know that the Constitution of Ohio required that its investments in bonds should be taxed under the general laws of the State. That under such general laws the bonds deposited by it would be required to be listed for taxation each year in the county where such bonds were, in the name of the person who owned them, on the day preceding the second Monday in April. That the president, principal accounting officer or agent would be required to list the same, and on the failure so to do the County Auditor would place them on the tax list and certify the taxes for collection. That it was the duty of the person in whose name taxes were charged upon a tax duplicate

to pay the same, one-half on or before the twentieth of December, and one-half on or before the twentieth of June, after said taxes were assessed. That if said tax remained unpaid when due any property belonging to it within the State, including the bonds themselves, might be taken by the Treasurer to satisfy said tax charge. The insurance company accepted these conditions, was bound to know their requirements, and agreed to comply with all of these laws. The court below, in passing upon this point, said (Record, p. 20):

> "The right of a State to tax the property of non-residents brought within the State is not disputed, and there is nothing in this law exempting as property the bonds of the original deposit from taxation. The company was bound to know that they would be subject to taxation and that, to their full value, they would be made available for the payment of any taxes which the State might lay upon them. The process of distraint is one which the statutes of the State provided and of which the complainant was bound to take notice.
>
> "These bonds are here, within the State, the property of complainant, substituted for the original bonds; and the claim of the complainant is that under the true construction of this statute, they are not subject to distraint, because they are not the bonds upon which the tax was levied. This claim ignores the fact and the purpose of the substitution, and treats the claim of the State as an attempt to levy and collect a tax upon an original deposit of non-taxable bonds."

And on page 19:

> "I think it has been conceded here that the taxes levied upon the bonds originally deposited might be collected by distraint upon these bonds, if they were still within the State; but it is said they are not within the State, but that bonds of the Government of the United States have been substituted in their place

and that they can not be subject to distraint. I think that position is inconsistent with the fair construction of this statute. These government bonds now on deposit are not being taxed, they are not subject to taxation, but an attempt is made to appropriate them to the payment of taxes which were properly levied upon other bonds, for which these bonds were substituted."

The power of the State to impose conditions upon a nonresident seeking to engage in business within its borders is beyond question.

"It is well settled that a State has the power to impose such conditions as it pleases upon foreign corporations seeking to do business within it."

Waters-Pierce Oil Co. v. Texas, 177 U. S., 28.

"The principle that the right of a foreign corporation to engage in business within a State, other than that of its creation, depends solely upon the will of such other State, has long been settled, and many phases of its application have been illustrated by the decisions of this court."

Cooper v. California, 155 U. S., 648, 652.

"While the foreign corporation may sell its goods in the State, or solicit sales in the transaction of interstate commerce, as a right, it can only establish itself in the State and do business therein, as a privilege granted by the State. While the State can not tax the exercise of the right, it can tax the enjoyment of the privilege. As the State has the right to exclude foreign corporations, it necessarily has, involved therein the right to impose conditions on their admission into its jurisdiction."

Judson on Tax., Sec. 158.

It was intended by the legislature of Ohio, in enacting Sections 3660, 3057 and the various statutes relating to the admission of foreign companies, to require such companies

to comply with all the laws of the State of Ohio; that they should be subject to and discharge all obligations which residents of the State were required to discharge. In permitting the stocks and securities deposited with the Superintendent of Insurance to be exchanged for other like securities, it is apparent that the securities so substituted should bear all the obligations which had accrued against the original bonds. It was the duty, therefore, of these companies to pay the taxes charged against them by virtue of the ownership of the municipal bonds during the years 1895 to 1902, inclusive. That duty was one which the State had a right to impose, as a condition precedent to the privilege extended to non-residents of the State in coming within its borders and enjoying the benefits of the State government. There seems to be no reason why the bonds which have been substituted for those originally taxed should not be subject to the obligations which were charged against the municipal bonds while on deposit.

III.

The validity of the Ohio Statutes providing for the collection of taxes as tested by the Federal Constitution.

The taxes assessed on account of the bonds deposited by foreign insurance companies under Section 3660, Revised Statutes, were certified to the Treasurer of Franklin county, Ohio, for collection. In compliance with the requirements of Section 1094, Revised Statutes of Ohio (Appendix *m*), the appellee, Willis G. Bowland, as Treasurer of Franklin county, Ohio, proceeded to collect these taxes. The two statutes by virtue of which the County Treasurer in this

case proceeded in the collection of said taxes are sections 1095 (Appendix *c*) providing for the summary remedy of distraint and section 2859 (Appendix *d*) providing for suit on behalf of the Treasurer and personal judgment for taxes due and unpaid.

The principal objection of appellant to the decree of the Circuit Court is the failure of that court to decide that section 1095 of the Revised Statutes, in so far as it attempts to give the Treasurer, Bowland, the right and power of collecting the taxes against a non-resident of the State by distraint of any property belonging to such non-resident found within his county, is repugnant to the Fourteenth Amendment of the Constitution of the United States.

(a) Summary proceedings in general.

The right of a sovereign government to proceed summarily in the method of collecting dues owing to itself, is as old as the common law, and statutes authorizing the distraint of property to satisfy tax charges which are past due and unpaid, are a part of the taxing machinery of every State in the Union, and of every civilized government.

> "The prompt and unembarrassed collection of taxes is admitted to be so necessary for the support of the government that the collection of taxes on personal property is enforced by distress, or imprisonment, and in no other manner, except in cases where the collector is allowed to maintain an action for them."
>
> *Desty on Tax.*, Vol. 2, p. 776.

> "The proceedings for the collection of delinquent taxes by summary process are not obnoxious to the constitutional provision of 'due process of law' * * *

the owner of property so distrained and sold is not thereby deprived of it without due process of law."

Desty on Tax., Vol. 2, p. 750.

"Distraint and seizure of person for the collection of delinquent taxes are also consistent with due process of law. This was illustrated in the decision sustaining the New York statute, according to which the party failing to pay taxes on personalty was subject to distraint and sale of his personal property, but also to a fine for misconduct. A national bank stockholder was prosecuted and convicted under this law, and ordered to stand committed until he paid the amount of the tax with interest and costs, unless the court should see fit sooner to discharge him."

Judson on Tax., Sec. 331.

The Supreme Court of the United States affirmed the judgment in the case which announced the foregoing principle, in the case of Palmer v. McMahon, 133 U. S., p. 660.

"A distress warrant issued by a Solicitor of the Treasury under the act of Congress passed on the fourteenth day of May, 1820, is not inconsistent with the Constitution of the United States.

"Neither is it inconsistent with that part of the Constitution which prohibits a citizen of being deprived of his liberty or property without due process of law.

"By the common law of England and the law of many of the colonies before the revolution and all the States before the formation of the Constitution, a summary process existed for the recovery of debts due to the government."

Murrays' Lessees v. Hoboken Land and Improvement Co., 18 Howard, 272.

Mr. Justice Curtis, in delivering the opinion of the court, said on page 276:

"That the warrant now in question is legal process is not denied. It was issued in conformity with the

act of Congress. But is it 'due process of law'? The Constitution contains no description of those processes which it was intended to allow or forbid. It does not even declare what principles are to be applied to ascertain whether it be due process. It is manifest that it was not left to the legislative power to enact any process which might be devised * * * We must examine the Constitution itself, to see whether this process be in conflict with any of its provisions. If not found to be so, we must look to these settled usages and modes of proceeding existing in the common and statute law of England, before the immigration of our ancestors, which have been shown not to have been unsuited to their civil and political condition by having been acted upon by them after the settlement of this country. We apprehend there has been no period, since the establishment of the English monarchy, when there has not been, by the law of the land, a summary method for the recovery of debts due to the Crown, and especially those due from receivers of the revenues. It is difficult, at this day, to trace with precision all the proceedings had for these purposes in the earliest ages of the common law. That they were summary and severe, and had been used for purposes of oppression, is inferable from the fact that one chapter of Magna Charta treats of their restraint * * *. Not only was the process of distress in nearly or quite universal use for the collection of taxes, (in legislation of the colonies and provinces and of the States after the Declaration of Independence, and before the formation of the Constitution of the United States) but what was generally termed a warrant of distress, running against the body, goods and chattels of defaulting receivers of public money, was issued to some public officer, to whom was committed the power to ascertain the amount of the default, and by such warrant proceed to collect it."

On page 281 Mr. Justice Curtis continues:

"The power to collect and disburse revenue, and to make all laws which shall be necessary and proper for carrying that power into effect, includes all known and

appropriate means of effectually collecting and disbursing that revenue, unless some such means should be forbidden in some other part of the constitution. * * * As we have already shown, the means provided by the act of 1820 do not differ in principle from those employed in England from remote antiquity—and in many of the states, so far as we know without objection—for this purpose, at the time the Constitution was formed. It may be added, that probably there are few governments which do or can permit their claims for public taxes, either on the citizen or the officer employed for their collection or disbursement, to become subjects of judicial controversy, according to the course of the law of the land. Imperative necessity has forced a distinction between such claims and all others, which has sometimes been carried out by summary methods of proceeding, and sometimes by systems of fines and penalties, but always in some way observed and yielded to."

Murrays' Lessees v. Hoboken, 18th Howard, 272.

"Congress, in the exercise of its power 'to lay and collect taxes, duties, imposts and excises,' may, to enforce their payment, authorize the distraint and sale of either real or personal property. The owner of the property so distrained and sold is not thereby deprived of it without due process of law."

Springer v. U. S., 102 U. S., 586.

"The power to distrain personal property for the payment of taxes is almost as old as the common law."

Cooley on Tax., p. 302.

"The collection of taxes belongs to the executive branch of the government, and the summary methods for enforcing such collection, sanctioned by long experience, constitute due process of law. The reasonable exercise by the legislature of the right of classification, to provide a summary process for the sale of property for delinquent taxes amounting to less than

the stated amount does not deprive the taxpayer of due process of law."

Judson on Tax., Sec. 330.

(b) Collection of taxes by distraint in Ohio.

(b) *Collection of taxes by distraint in Ohio.*

The law authorizing the collection of taxes by distraint was adopted in Ohio by the first law making body appointed under the Ordinance of 1787 for the government of the territory known as the Northwest Territory, and has been in force in Ohio ever since. This method of proceeding for the collection of taxes has been a usual and ordinary method for that purpose ever since the territory embraced in the State of Ohio has been under the dominion and control of a civilized race. The first law providing for the collection of a personal tax was that adopted under the Ordinance of 1787 and passed August 1, 1792. Chase's Statutes, p. 119-120. It authorized the collector to collect sums assessed against any person, by distraint of the goods and chattels and the imprisonment of such person refusing to discharge the obligation.

By an Act of the first General Assembly of the Northwest Territory, approved December 19, 1799, section 19 provides for the distraint and sale of property for unpaid taxes.

By an Act of the first General Assembly of the State of Ohio, passed April 16, 1803, (1 Ohio Laws, 58), Section 5, recognized the right and duty of the tax collector to proceed to distrain and sell personal property of such persons as shall be delinquent on the first day of October.

By the Act of January 24, 1827, (25 Ohio Laws, p. 25) the office of collector of taxes was abolished and the Treas-

urer or his deputy was required by section 11 of the act to distrain sufficient goods and chattels to pay taxes due and costs that may have accrued. This section of the Act was substantially re-enacted in section 19 of the Act passed March 12, 1831 (29 Ohio Laws, p. 291), which Act remains in force at the present time unamended, and is now embodied in the revision of the statutes under the title "Section 1095. Overdue taxes may be collected by distress."

The remedy for collection of taxes by distraint has therefore been in existence prior to the adoption of the first Constitution of Ohio, and immediately after it was organized as a territory; the statute now sought to be enforced by the Treasurer of Franklin county has stood upon the statute books since 1831 without amendment or repeal; no court during the past one hundred years and more has questioned the validity of this remedy for the collection of State revenues.

It is idle to contend that this statute violates any constitutional inhibition so far as it relates to the taking of propery of persons residing within the State, for delinquent taxes, whether the property taken be the same property as was taxed or otherwise.

What constitutional protection can a non-resident of Ohio invoke, in respect to the operation of section 1095 upon property located within the State, that does not accrue to a citizen of the State?

(c) There is no constitutional objection to the right of a State to collect unpaid taxes, assessed on account of personal property, owned by a non-resident, having a taxing situs within the State, by distraint of any property belonging to such non-resident found within the territorial limits of the State.

As a basis for the relief asked by appellant restraining the County Treasurer from proceeding under Section 1095 (Appendix *c*) of the Revised Statutes of Ohio, it is alleged in the bill of complaint (Record, p. 6):

> "Bowland, as said Treasurer, threatens to and will, unless restrained by this court, distrain, or attempt to distrain, and sell, or attempt to sell, claiming to act in that behalf, under the provisions of said section 1095, the said bonds of the United States belonging to complainant and now on deposit with the Superintendent of Insurance of the State of Ohio, as aforesaid, or other personal property of complainant which may now or hereafter be situate in said Franklin county, or the State of Ohio."

From this statement of the bill it is apparent that no attempt is about to be made to distrain any property belonging to appellant which is not located within Franklin county or the State of Ohio. The bonds belonging to appellant deposited with the Superintendent of Insurance, which the County Treasurer was about to take, were not the same property on account of which the taxes for the years 1895 to 1903, inclusive, were levied, but had been substituted therefor on the second day of April, 1903 (Record, p. 2) under the provisions of section 3660 of the Revised Statutes (Appendix *a*).

The principal question in this case is upon the claim of appellant to the effect that the Constitution of the United States forbids a State to enforce a statute against a non-resident of the State, which authorizes the collection of a tax on property belonging to such non-resident, other than the particular property on account of which the tax was originally levied; that is, if a State taxes the personal property of a non-resident, it must collect the tax out of that personal property and none other.

In answer to this claim it will be found that it rests upon no sound principle of law. If conceded, it would, in practical operation, result in the escape from taxation of all personal property within the State belonging to non-residents, because those taxes, the collection of which the State may not ultimately enforce, will remain unpaid.

The constitutional objection urged under the Fourteenth Amendment is that "due process of law" requires that no State statute may operate beyond the limits of the State.

That to take other property than the particular property on account of which the tax was levied, solely by virtue of the fact that such property belongs to the same person who owned the original property taxed, that person being at all times a non-resident of the State, under a State statute, is in effect to give such statute an extra-territorial operation and is void.

That no State has power to subject a non-resident to an obligation to pay taxes on account of property belonging to such non-resident having a taxing situs within the State that may be enforced by the distraint and sale of other property than the original property taxed, although that property so sought to be distrained is within the jurisdiction of the State.

That although property of a non-resident may have a taxing situs within the State, taxes can not be charged against the owner of such property so that "goods and chattles belonging to the person or persons charged with such tax" may be distrained to pay said tax.

That to enforce an obligation against any property found within the county, belonging to a non-resident, on account of a tax assessed against said non-resident under a statute directing that personal property of every description shall be listed, in the name of the person who was the owner thereof, on the day preceding the second Monday in April of each year, would be to give an extra-territorial effect to such statute and therefore void.

The principles of law relied upon by the complainant to support the foregoing contentions are concisely stated by Mr. Justice Field in the opinion of *Pennoyer v. Neff*, 95 U. S. 714. On page 720 he says:

> "The authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established."

Page 722:

> "No State can exercise direct jurisdiction and authority over persons or property without its territory."
>
> "And so it is laid down by jurists, as an elementary principle, that the laws of one State have no operation outside of its territory, except so far as is allowed by comity; and that no tribunal established by it can extend its process beyond that territory so as to subject either persons or property to its decision."

The soundness of these principles is so well established by authority that they must be conceded.

But the learned judge from whose opinion they are quoted places them in their proper relation to other princi-

ples of law, which he stated later in the same opinion, on page 723:

> "But as contracts made in one State may be enforceable only in another State, and property may be held by non-residents, the exercise of the jurisdiction which every State is admitted to possess over persons and property within its own territory, will often affect persons and property without it. To any influence exerted in this way by a State, affecting persons resident or property situated elsewhere, no objection can be justly taken; whilst any direct exertion of authority upon them, in an attempt to give ex-territorial operation to its laws, would be deemed an encroachment upon the independence of the State in which the persons are domiciled or the property is situated, and be resisted as usurpation."
>
> "So the State, through its tribunals, may subject property situated within its limits, owned by non-residents to the payment of demand of its own citizens against them; and the exercise of this jurisdiction in no respect infringes upon the sovereignty of the State, where the owners are domiciled. Every State owes protection to its own citizens; and, when non-residents deal with them, it is a legitimate and just exercise of authority to hold and appropriate any property owned by such non-residents to satisfy the claim of its citizens. It is in virtue of the State's jurisdiction over the property of the non-resident situated within its limits that its tribunals can inquire into that non-resident's obligations to its own citizens, and the inquiry can then be carried only to the extent necessary to control the disposition of the property. If the non-resident had no property in the State, there is nothing upon which the tribunals can adjudicate."

The taxation laws of Ohio, so far as they are pertinent to the collection of a tax from a non-resident by distraint, may be summarized as follows:

Section 2744 (Appendix g) provides that:

> "The president, secretary and principal accounting

officer of every * * * insurance company * * * whether incorporated by any law of this State or not, shall list for taxation, verified by the oath of the person so listing, all the personal property * * * moneys and credits of such company or corporation within the State," etc.

Section 2746 (Appendix *k*) provides:

"Personal property of every description, moneys and credits, investments in bonds, stocks, joint stock companies, or otherwise, shall be listed in the name of the person who was the owner thereof on the day preceding the second Monday of April of each year; * * *

Section 2781*a* (Appendix *b*) provides:

"If any person whose duty it is to list property, * * * shall fail to make a return * * * the county auditor shall * * * enter the same on the tax lists in his office, giving a certificate therefor to the county treasurer, who shall collect the same as other taxes" * * *

Section 1091 (Appendix *j*) provides:

"Each person charged with taxes on a tax duplicate, in the hands of the county treasurer, may pay the full amount of such taxes on or before the twentieth day of December, or one-half thereof on or before the twentieth day of December, and the remaining half thereof on or before the twentieth day of June next ensuing."

Section 1094 (Appendix *m*) provides:

"When one-half of the taxes aforesaid, charged against any entry, on a tax duplicate in the hands of a county treasurer, is not paid on or before the twentieth day of December next, after the same has been so charged, or when the remainder of such taxes is not paid on or before the twentieth day of June next thereafter, the county treasurer *shall proceed to collect* the same *by distress or otherwise.*" * * *

Section 1095 (Appendix *c*):

> "When taxes are past due and unpaid, as stated in the preceding section, the county treasurer, or his deputy, may distrain sufficient goods and chattels belonging to the person or persons charged with such taxes, if found within his county, to pay the taxes so remaining due and the costs that have accrued." * * *

The theory of the laws of Ohio taxing personal property, as exhibited by the foregoing quotations, is that such taxes are obligations created by legislative authority and assessed against the owner of property as the measure of his duty to contribute to the support of public burdens in exchange for the protection afforded his property by the government. Although the property is resorted to for the purpose of ascertaining the amount of the tax the individual and not the property must pay the tax.

Desty on Tax., page 7.

The power of a State to tax property of a non-resident is by virtue of jurisdiction over such property. But the meaning of the word "property" indicates the right of a person to own and control things external to such person.

Property is "rightful dominion over external objects; ownership; the unrestricted and exclusive right to a thing."

Black's Law Dict., 253.

> "The right of property is that sole and despotic dominion which one man claims and exercises over the external things of the world in total exclusion of the right of any other individual in the universe. It consists in the free use, enjoyment, and disposal of all a person's acquisitions, without any control or diminution save only by the laws of the land."

Blackstone's Com., Bk. I, p. 138; Bk. II, pp. 2-15.

The right of a State to tax property, therefore, involves the right to diminish the ownership thereof; and so far as the property of a non-resident is taxed, the rights of its non-resident owner are affected. The right to assess property for taxation carries with it the right of the State to point out a taxpayer. Inanimate objects acquire the status of property only in relation to the ownership thereof, and without an owner such objects lose the attributes of property. To say that property may be taxed is in effect to say that the owner of the things and objects which constitute such property owes an obligation to pay a tax therefor. These inanimate objects are lifeless, can owe no obligation to the State and can be taxed solely on the theory that the owner thereof, in exchange for the benefits and protection of government, must respond in proportion to the value of the things so owned in support of such government.

Under the scheme of taxation adopted in every State in the Union, taxes on account of the ownership of personal property are assessed in the name of and against the owner thereof.

> "The revenue laws usually direct the assessment to be made against the person liable for the taxes, in his name. This requirement is held to be for the benefit and protection of the taxpayer, and mandatory, in the absence of legislation to the contrary; non-compliance therewith by the assessing officers rendering the assessment void."
>
> *Am. & Eng. Enc. of Law*, Vol. 27, 672.

> "The statutes usually contain a general provision requiring the assessments to be made in the name of the owner of the property, if known * * * except as modified by other statutory provisions, strict

compliance with such directions is necessary to a valid assessment."

Am. & Eng. Enc. of Law, Vol. 27, 673.

The legislature of Ohio has adopted this, the only practicable method of assessing personal property, and has required such property to be listed in the name of the person who was the owner thereof on the day preceding the second Monday in April. In this, it has followed the same general scheme of taxation adopted by other States.

"The date at which the presence of personal property in a jurisdiction or taxing district determines its taxability is generally regulated by statute which provides for the day of assessment."

Am. & Eng. Enc. of Law, Vol. 27, 648.

The right to tax property, therefore, involves the power to diminish the owner's right to control said property to the extent of the amount of the tax, and is personal to the owner to that extent. The obligation to pay a tax must be created by legislative authority. It can be created only by laws which operate within the jurisdiction of the State in which they are enacted.

Such laws may affect the property of persons residing beyond the limits of the State, but however absolute the right of the individual in his control of property may be, it is in the nature of that right that it must bear a portion of the public burdens. The legislature may impose the duty of discharging this obligation upon the person of a non-resident and in the event of his failure so to do may authorize the tax collector of the State to enforce such obligation upon any property so long as it is within the territorial limits of the State. The State may exercise its jurisdiction

over the property of non-residents located within its own territory to discharge an obligation due to itself even though the exercise of that power may affect persons beyond its limits.

The right to so subject property to the payment of a tax charge can only be carried to the extent of such property owned by such non-resident as is within its limits, but so long as no other property *than that located within its jurisdiction* is authorized by statute to be taken such statute can be said to have no extra-territorial effect.

> "Taxes are not debts, but obligations created by legislative authority, to which the personal consent or individual assent of the party charged is not required. They create obligations which it is the duty of the party upon whom they are imposed to discharge."
>
> *Desty on Taxation*, section 6.

> "Taxes are positive acts of government, through its various agents, binding upon the inhabitants, and to the making and enforcing of which their personal consent individually is not reqiured."
>
> *Desty on Tax.*, section 6.

> "Taxes are not founded on contract, but owe their existence to the action of the legislature, and do not depend for validity upon individual assent, but operate *in invitum*. A tax law is a legislative enactment which defines the measure of every man's duty in support of the public burdens, and provides the means of enforcing it."
>
> *Desty on Taxation*, section 6; citing *Philadelphia Ass'n* v. *Wood*, 39 Pa. St., 82.

> "The citizen and property owner owes to the government the duty to pay the taxes assessed against him. It is the duty of persons against whom a tax is levied to pay the same. It is a duty, the failure to perform

which is a fault of the owner; but he is not responsible for steps leading to it. The owner of property liable to taxation is bound to contribute his lawful share to the current expenses of government while engaged in ascertaining the amount which he may be assessed. However absolute the right of the individual may be, it is still in the nature of that right that it must bear a portion of the public burdens, and that portion must be determined by the legislature."

Desty on Taxation, page 11.

"The tax is imposed on the person of the owner; for though property is resorted to for the purpose of ascertaining the amount of the tax, yet the individual and not the property pays the tax."

Desty on Taxation, page 7; citing *Green v. Craft*, 28 Miss., 70; *Rundall v. Lakey*, 40 N. Y., 517.

The statement that taxes are not debts is true in the sense that the statutes enacted for the collection of debts are not jointly applicable to the collection of taxes. Taxes may be collected solely by virtue of legislative enactment providing specifically for their collection.

The statement has been made so often that taxes are not debts that the question occurs: 'What are they?' From the foregoing citations it is apparent that the obligation to pay a tax is a much higher obligation than the duty of one citizen to discharge an obligation arising out of a contract with another citizen. As stated by Mr. Justice Brewer in the case of *Florida Central Railway Company v. Reynolds*, 183 U. S., at page 475:

"It must be remembered that 'taxes are not debts in the ordinary sense of that term;' that they are 'the enforced proportional contribution of persons and property, levied by the authority of the State for the support of the government, and for all 'public needs,

(Cooley on Taxation, First Ed., pages 13-1). They are obligations of the highest character, for only as they are discharged is the continued existence of government possible. They are not cancelled and discharged by the failure of duty on the part of any tribunal or officer, legislative or administrative. Payment only discharges the obligation, and until payment the State may proceed, by all proper means, to compel the performance of the obligation."

A claim for taxes is recognized by the laws of every State to be superior to any private claim on account of debt. As was said by the court in the case of *Allen v. Armstrong*, 16 Iowa, 512:

> "It is in the nature of a first and paramount lien; it takes precedence in the settlement of estates, of all other claims and is universally acknowledged to be one of the highest obligations known to our laws."

In the case of *Buck v. Miller*, 147 Ind., page 586, Howard, J., in the opinion, at page 597, said:

> "Taxes are not debts in the ordinary sense of that term but are rather contributions for the support of the body politic; and it is competent for the legislature to provide how such contributions shall be collected."
>
> Citing *Geren v. Gruber*, 26 La., 694; *Cappen v. Hull*, 21 Vt., 152.

The legislature has just as much power to provide the enforcement and collection of taxes which may be due from a non-resident as it has to provide for the collection of debts which may be due to a resident of the State from debtors residing beyond its jurisdiction. A *taxpayer* is just as essential to a valid tax levy as an obligor is to the creation of a valid debt.

> "The general rule is that a non-resident who makes an investment in a State of the Union holds it subject

to all the laws of that State, both present and prospective. His property may therefore be taxed by the State; it may be subjected to attachment and execution in accordance with those laws; his title may be divested under the statute of limitations of the State in which his property is situated; and in other ways his property rights may be affected by State action."

Reno on Non-residents, section 25.

"Each State has the power to authorize the attachment of any property within its limits and jurisdiction, whether the property be owned by a resident, or a non-resident, or a foreign corporation. 'The exercise of this jurisdiction in no respect infringes upon the sovereignty of the State where the owners are domiciled. Every State owes protection to its own citizens; and, when non-residents deal with them, it is a legitimate and just exercise of authority to hold and appropriate any property owned by such non-residents to satisfy the claims of its citizens. It is in virtue of the State's jurisdiction over the property of the non-residents situated within its limits that its tribunals can inquire into that non-resident's obligations to its own citizens, and the inquiry can then be carried only to the extent necessary to control the disposition of the property. If the non-resident has no property in the State, there is nothing upon which the tribunals can adjudicate.'"

Reno on Non-residents, section 136.
Citing *Pennoyer v. Neff*, 95 U. S., 714.
Picquet v. Swan, 5 Mason, 35.

In the case of *McGoon v. Scales*, 9 Wall., 23, Mr. Justice Miller, on page 30, said:

"There can be no question of the right of the legislature of Wisconsin to pass such laws as will subject property within her territory, held or owned by non-residents, to the payment of the debts of such owner; and the manner of doing this is also entirely within legislative control, provided it does not violate some of the provisions of the Federal or State Constitution."

"In Georgia, on a motion to dismiss an attachment obtained on the ground that the defendant resided out of the State, it was urged in support of the motion that the attachment was void under the Fourteenth Amendment of the Constitution of the United States; but the court said: 'No one ever dreamed that the attachment laws of the several States, authorizing attachments against non-resident defendants, were violated by the Constitution of the United States. Argument is unnecessary.'"

Drake on Attachments, section 57; citing *Pyrolucite M. Co. v. Ward*, 73 Ga., 491.

"All the States authorize attachments against the property of non-resident debtors. There is a general uniformity in the statutes so far as concerns the right of action with a conservative remedy, against debtors not residing in the State in which the suit is instituted, who have property within it subject to execution for debt. The principle is everywhere recognized that the property is subject to the jurisdiction, though its owner can not be reached by process."

Waples on Attachments, section 32.

We can see no reason why the State has not the same power to provide by law for the discharge of the obligations due to itself in the nature of a tax from the property of a non-resident within its jurisdiction as it has to subject property situated within those limits, owned by a non-resident, to the payments of the demands of its own citizens arising upon a contract. The obligation of a non-resident to pay a debt arising out of a contract in exchange for the value received as a consideration for that contract is no higher or greater than the obligation created by a sovereign government without the consent of the individual, as the measure of his duty to share public expenses in consideration of the protection which it affords his property. A non-resident

can as readily owe the duty to discharge a public obligation in the nature of a tax as he can to pay a private claim. There is no constitutional objection to the right of the State to subject the property of such non-resident, when found within its limits, to the discharge of a valid tax which has been levied, which could not be urged with the same force against an attempt on the part of the State to attach the property of a non-resident to pay the claim of one of its citizens.

> "If it were true that the State has no mode of collecting her taxes except by seizure and sale of the property assessed, it is no less true that she has an absolute right to enforce their payment in that mode."
>
> "If the exercise of this right is illegally thwarted, and obstructed by a delinquent tax collector, she is clearly entitled to some remedy for such a wrong, and it would be passing strange if her own courts, which she so jealously holds open to every citizen for vindication of all legal rights, should be hermetically sealed against herself alone."
>
> *State v. Meyer*, 41 La. Ann., 439.

> "It is not necessary that the property distrained should be that upon which the tax accrued, nor is it material that the property levied on was purchased subsequent to the assessment of taxes."
>
> *Am. & Eng. Enc. of Law*, Vol. 27, p. 791.

In the case of *Hall v. The American Refrigerator Transit Co.*, 24 Col., 291, the average number of refrigerator cars owned by a foreign corporation were taxed. And the plaintiff, as treasurer of Arapahoe county, sought to collect the tax by distraint and sale of the property of the defendant. The Refrigerator Company were using refrigerator cars within the State of Colorado and although each car

was only temporarily in the State at any time in the course of interstate shipments, the court held that the State of Colorado had a right to take the average number of cars, and upheld the right of the treasurer of Arapahoe county to distrain any of the property which might belong to the Refrigerator Company, in order to collect the taxes assessed. In this case, as in the Pullman Palace Car case, the taxing officers were not restricted to distrain the identical cars which happened to be within the State upon the particular date when the taxes were assessed, but might distrain and sell any property belonging to the said company.

Appellant claims that, conceding that these bonds had a taxing situs within the State, collection of said taxes could be enforced out of those bonds alone, and that to enforce payment on other property of appellant within the State would be by virtue of a *personal charge* or debt assessed against the non-resident owner, and that this is forbidden by the Federal Constitution. The only two cases cited to support this view are those of *New York v. McClain*, 170 N. Y., 374, and *Dewey v. Des Moines*, 173, U. S., 193. An analysis of each of these cases serves to show the doctrine for which they are authority.

In the case of *New York v. McClain*, 170 N. Y., 374 McClain was a resident of New Jersey, and owned one hundred and twenty-nine shares of stock in the Standard National Bank of New York City. The board of taxes and assessments had authority, under statutes of the United States and of the State of New York, to tax the stock of a national bank of the City of New York owned by a non-resident. Such a tax was levied in the name of McClain. A suit was brought against McClain to obtain a personal

judgment for the amount of said tax, under a statute providing that the same remedies may be pursued for the collection of said tax "As are now provided by law for enforcing payment of personal taxes against residents." Personal service of summons was obtained on defendant.

It was held that the Board of Taxes and Assessments had no jurisdiction of the person of the defendant, and could not make any assessment against him on account of the ownership of said bank shares which could be made the basis of a personal judgment against him. The general tax law under consideration in that case provided that (p. 380 of the opinion):

> "*All personal property within the State*, whether owned by individuals or corporations, should be liable to taxation, and another statute provided that persons and associations doing business within the State, as merchants, bankers, or otherwise, and not residents of the State, should be assessed and taxed on all sums invested in said business the same as if they were residents, such taxes to be collected *from the property* of the firms, persons or associations to which they severally belong."

The tax could be collected under this law (Laws of New York, 1855, Ch. 37, Sec. 1) from *any* property belonging to the firm, person or association whose property was taxed. No question was raised upon the point as to whether other property belonging to the defendant, McClain, if found within the State of New York, could be taken to satisfy the tax charge, and that question was not decided.

In the case of *Dewey v. Des Moines*, 173 U. S., 193, a resident of Chicago, Illinois, owned lots in Des Moines, Iowa, upon which certain assessments had been levied for the payment of a surface improvement of the street upon

which said lots abutted. No actual notice of the proceedings looking towards such improvement was had upon the non-resident owner. A statute of the State of Iowa provided for a personal liability of the owner of lots to pay the whole assessment levied to pay the cost of the local improvement. A judgment was rendered in favor of the contractor against Dewey, the non-resident, in the Iowa Court, providing for a personal execution to collect any balance remaining unpaid after the sale of the lots. The principle involved in the decision of the case is concisely stated in the opinion on page 203:

> "The principle which renders void a statute providing for the personal liability of a non-resident to pay a tax of this nature is the same which prevents a State from taking jurisdiction through its courts, by virtue of any statute, over a non-resident not served with process within the State, to enforce a mere personal liability, and where no property of the non-resident has been seized or brought under the control of the court. This principle has been frequently decided in this court. One of the leading cases is *Pennoyer v. Neff*, 95 U. S., 714, and many other cases therein cited. * * *
>
> "A judgment without personal service against a non-resident is only good so far as it affects the property which is taken or brought under the control of the court or other tribunal, in an ordinary action to enforce a personal liability, and no jurisdiction is thereby acquired over the person of a non-resident further than respects the property so taken."

These two cases relied upon by appellant are authority at most for the proposition that a citizen of one State can not be cast in a personal judgment, upon a claim for taxes assessed in another State on account of property belonging to him having a taxing situs within such State.

It does not follow that a State statute may not authorize taxes, assessed against a non-resident, to be collected out of any personal property of such non-resident *found within the State.*

The nature of the obligation to pay taxes is recognized by the Federal laws relating to bankruptcy which give preference to taxes, federal and State, over all other obligations; such taxes are paid, in full, out of all property belonging to the estate and not out of the property taxed.

Taxes levied on account of personal property belonging to a resident of New York having a situs for taxation in the State of Minnesota, were held, by virtue of a statute of Minnesota, to be a debt which might be proved against the estate of a non-resident owner and collectible out of other property within the State than the very property taxed.

Bristol v. Washington Co., 177 U. S., 133.

Our opponents say a non-resident can not owe a tax—that a person can not be charged with a tax on account of property held within a foreign State. In the syllabus of the case of Bristol v. Washington County, cited above, the following language is used:

> "The personal property of a citizen of and resident in one State, invested in bonds and mortgages in another State, is subject to taxation in the latter State; and the amount of the tax is a claim against the *property of the person taxed.*"

It would not be claimed that the taxes assessed against Mrs. Bristol could be collected from property owned by her outside of the State of Minnesota, say, in the State of New York. The procedure objected to and under consideration in that case sought only to subject property to the payment

of a tax charge which was in process of administration in the State of Minnesota and within the jurisdiction of that State. Under the decision there announced *any* property belonging to the estate of a non-resident charged with taxes could be sold to pay said taxes.

Counsel for appellant say that the taxes in that case were held to be collectible out of the estate of the decedent by virtue of two statutes of the State of Minnesota: (1) A statute declaring that taxes assessed upon personal property shall be a lien upon the personal property of the person assessed from and after the time the tax books are received by the county treasurer; (2) a statute making a tax a claim against the property which survives the death of the person against whom the tax is levied and remains a claim against his estate.

The Ohio statute, Section 1095 (Appendix *c*), under consideration in the case at bar authorizes taxes standing upon the tax list in the name of the owner of the property taxed, be he resident or non-resident of the State, to be collected by distraint of any goods and chattels belonging to said owner *found within the county*.

The legislative enactments of the State of Minnesota are based upon the same view of the obligation which the owner of property owes towards sharing the burdens of State government on account of property located within that State, as has been adopted by the Legislature of Ohio.

We can see no greater objection from a constitutional standpoint against a statute which authorizes the collection of a tax out of all the personal property found within the county and belonging to a non-resident of the State, than might be urged against a statute which makes such tax a

lien upon all the personal property of such non-resident within such county from and after the time the tax books may be received by the county treasurer. The taxes are assessed in the name of the non-resident owner in Ohio on account of property owned by him on the day preceding the second Monday in April; in Minnesota, on account of property owned by him, on the first day of May (Sec. 1515, R. S. of Minnesota). In Ohio, the treasurer may distrain all property belonging to such non-resident, found within his county, on the twentieth day of December following. In Minnesota, the lien attached to all personal property belonging to such non-resident first Monday in January (Sec. 1562, Statutes of Minnesota). The statute of each State involves the power to diminish the rights of ownership of non-residents over property other than the property in respect to which taxes have been assessed against him.

Nor is a statute authorizing the collection of a tax from all the property of a living person any more objectionable than one which authorizes it to be collected from the estate of a decedent, the person in each case charged with the tax having been a non-resident of the State at the time the tax was levied. The power exercised by the Legislature of Ohio in the enactment of Section 1095, Revised Statutes, is no more objectionable to the Federal Constitution than the power exercised by the Legislature of Minnesota in enacting the two statutes quoted by counsel.

The power of a State to collect taxes in relation to the right of a non-resident, owner of property, is discussed in the opinion of the Bristol case by Mr. Chief Justice Fuller, at page 145:

> "But it is further contended that, as Mrs. Bristol was a non-resident, the power to tax could be exercised

> only as against the very property taxed; that these assessments did not constitute judgments *in personam;* and that judgment against her estate could not, therefore, be rendered upon them. The State statute provided that claims for taxes should be preferred to ordinary debts, and, as has been seen, the Supreme Court has decided that, 'for the purpose of proof and payment out of the estate, a personal tax is a debt.' The court, for that purpose, so treated taxes, but not as being debts in the usual acceptation of the term. The obligation to contribute to the support of government is not dependent on contract, but on the exercise of the public will as demanded by the public welfare."

And of the process of distraint against non-residents, on p. 146, continues:

> "Thus it appears that on the return of the delinquent tax list, the amount of the tax could be collected by distraint of goods and chattels, or by proceedings by attachment and publication, judgment in which would operate on the property taken in attachment, by garnishment or otherwise. There was no want of due process in all this, *for while the non-resident came under the obligation to pay,* appropriate notice and opportunity to contest were afforded. And if a personal action were brought and service obtained, the defendant would not be cut off from any competent defense, as the delinquent list would not necessarily be held conclusive."

This court in the Bristol case takes the view for which we contend now, that the right to collect taxes assessed on account of property belonging to a non-resident having a taxing situs within a State, by any means, including that of distraint, is not objectionable so far as the means used do not extend the operation of a State statute beyond the territorial limits of the State. It also effectually disposes of the claim that a non-resident can not be under any obligation to pay taxes on account of property belonging to him, having

a taxing situs within the State. The whole argument of our adversaries is based upon the proposition that a State can not impose upon a non-resident any obligation in reference to the payment of taxes assessed against his property. The true principle to be deduced from the authorities it seems to us is, that a State can not impose upon a non-resident an obligation to pay taxes, assessed on account of property belonging to such non-resident being within its jurisdiction, which can be enforced beyond the territorial limits of the State.

(d) The power of the State of Ohio to collect taxes upon personal property of all non-residents of the State is at stake in this case.

Personal property is quick to evade a just share of the burden of local taxation at best. In Ohio all property is listed for taxation in the name of the person who was the owner thereof on the day preceding the second Monday of April of each year. Taxes are assessed by the local taxing bodies in June. The tax list is made up and delivered to the Treasurer in October. Taxes are due and payable, one-half on or before December 20, and the remainder on or before June 20 following. Collection of taxes levied on account of the property listed in April can be enforced not earlier than the twentieth day of December following. The ownership of personal property changes frequently and in the nature of things is migratory. If taxes levied on account of personal property can be collected only by a resort to the very property taxed, but a small amount would be covered into the public treasuries in any of the States from taxes upon personal property. If the contention of our op-

ponents is valid, no taxes levied on personal property will be paid in the future by non-residents of Ohio because the collection thereof can not be ultimately enforced. The property owned by a non-resident within the State on the thirteenth day of April can not be identified for the purpose of collecting the taxes from it on and after the twentieth day of December. To say that the taxes can be levied on the property alone and not in the name of the owner thereof is to deprive the taxing machinery of all means of identifying the personal property. In the affairs of commerce, personalty above all other things is identified by its ownership, and to tax personal property in the abstract without reference to its ownership is in effect to exempt it from taxation.

The property of express, telephone and telegraph companies non-residents of the State of Ohio, is assessed for taxation in that State by a board of appraisers and assessors under Section *2778a* of the Revised Statutes. The property of freight line and equipment companies, foreign corporations, is assessed by a board of appraisers and assessors under Section *2780-9* of the Revised Statutes of Ohio. The property of sleeping car companies, non-residents, is assessed for taxation by a board of appraisers and assessors under Section *2780-14* of the Revised Statutes of Ohio. The personal property of railroad companies, non-residents, located within this State, is assessed for taxation by a board of appraisers and assessors under Section *2770, et seq.,* of the Revised Statutes of Ohio.

The constitutionality of the foregoing statutes which authorize the *listing of the personal property* of these various non-resident corporations by boards of assessors and

appraisers has been frequently tested and upheld. *Adams Express Company v. State Auditor*, 165 U. S., 194, and cases there cited.

An examination of these statutes so far as they provide for the collection of taxes so listed discloses the fact that upon failure of said non-resident corporation to pay the taxes assessed, collection can be enforced only under the general provisions of the statutes of Ohio, authorizing the treasurers of the various counties of the State to collect taxes.

Section 2780 provides that the taxes (assessed against these foreign corporations) shall be collected "in the same manner as taxes are levied and collected on other personal property in the taxing district in question."

Sections 2780-11, 2780-16 and 2780-21 provide for the collection of excise taxes as follows:

If the various foreign corporations fail or refuse to pay the taxes assessed, said taxes shall be collected by any means provided by law for the collection of taxes by county treasurers.

The collection of the taxes assessed by these various boards against non-resident corporations doing a tremendous business within the State of Ohio, is enforcible, in the last instance, by proceedings against whatever property can be found by the tax collector within the State of Ohio belonging to such non-resident. If it be true, as contended by appellant, that the statute providing for County Treasurers proceeding against any property belonging to non-residents found within their counties so far as it affects the property of non-residents, is unconstitutional and void, the taxation of the personal property of these foreign corporations doing

business in the State of Ohio, including railroad companies, express companies, sleeping car companies, etc., will be practically destroyed. This court has held that the statutes of Ohio relating to the listing of the property of these non-resident corporations are valid; yet if there is no existing valid legislation in Ohio by virtue of which the taxes levied under such statutes can be ultimately enforced, it is apparent that the effort to tax them must fail. The personal property of railroad companies changes daily from county to county and from State to State. The personal property of express companies changes as rapidly. The personal property of sleeping car companies and freight line companies is just as migratory and not in a single case does the exact personal property on account of which the tax is assessed in April remain within the State until December, the earliest date within which collection of taxes can be enforced. If the taxes can not be enforced, no one will contend that any of these foreign corporations will pay the taxes from a sense of moral duty.

The right of appellant, as Treasurer of Franklin county, to proceed against either the bonds of the United States deposited by The Scottish Union and National Insurance Company with the Superintendent of Insurance of the State of Ohio, or any other personal property belonging to said company found within his county, to pay taxes charged on the tax duplicate of said county in the name of said company, is consistent with the decisions of this court in the cases of *Bristol v. Washington County*, 177 U. S., 133, and *Pullman Palace Car Company v. Pennsylvania*, 141 U. S., p. 18. *Marye v. Baltimore & Ohio Ry. Co.*, 127 U. S., 117.

Mr. Justice Matthews in the opinion, on p. 123, says:

> "If the Baltimore & Ohio Railroad Company is permitted by the State of Virginia to bring into its territory and there habitually to use and employ a portion of its movable personal property, and the railroad company chooses so to do, it would certainly be competent and legitimate for the State to impose upon such property, thus used and employed, its fair share of the burdens of taxation imposed upon other similar property used in the like way by its own citizens. And such a tax might be properly assessed and collected in cases like the present where the specific and individual items of property so used and employed were not continuously the same, but were constantly changing, according to the exigencies of the business. In such cases the tax might be fixed by an appraisement and valuation of the average amount of the property thus habitually used, and collected by distraint upon a portion that might at any time be found."

Marye v. Baltimore & Ohio Ry. Co., 127 U. S., 117.

IV.

The bonds of the United States owned by a non-resident are subject to distraint or attachment to satisfy a charge against the owner thereof.

The point was made in the court below that bonds of the United States were exempt from taxation by any State and exempt from process of a statute enacted for the collection of taxes. The only case cited was that of *McCulough v. Maryland*, 4 Wheaton, 316.

The doctrine of law embodied in the decision in that case was enacted into a statute by Congress, Section 3701, Revised Statutes of the United States.

Under this statute and under the decision of the *McCullough v. Maryland* case, it is conceded that no State has

a right to tax bonds issued by the federal government. But the right of any citizen of the United States or any State to subject a federal bond to the payment of the debts or obligations of the owners of such bonds seems to us to need little argument. It can make no difference to the government of the United States into whose possession and ownership its obligations may come. It can impair no right of the federal government to subject the bonds of the United States owned by The Scottish Union and National Insurance Company to the payment of taxes charged against said company. The means employed by the federal government in executing its constitutional powers could not be limited, impaired or destroyed in the event that its bonds when issued or sold were subject to be taken from the owner thereof upon execution or by the distraint laws of the several States. It matters not to a sovereignty who its creditors may be, so long as no attempt is made to diminish the rights of the government itself, in the obligation issued by it. The change of ownership in bonds issued by the federal government does not in any way affect the powers of such government.

Plumber v. Coler, 178 O. S., 115.

> "It should be observed that property may be exempted both from taxation and from levy and sale upon a common execution and yet be distrainable by statute for unpaid taxes."
>
> *Am. & Eng. Enc. of Law*, Vol. 27, p. 791.

V.

The duty of the County Auditor under Section 2781a, Revised Statutes, to list property omitted or not returned for taxation, is not dependent upon the presence within the State of the property omitted at the time the corrections are made.

The taxes assessed against The Scottish Union and National Insurance Company for the years 1901, 1902 and 1903, were placed upon the tax list by the Auditor on the eleventh day of December, 1903. Said bonds had been removed from the State on the second day of April, 1903. (Record, p. 2.)

Under Section 2781*a* of the Revised Statutes (Appendix *b*) the Auditor was required by law to enter upon the tax lists in his office the true amount of personal property, moneys, credits and investments which ought to have been returned or listed by the owner or his agent for each year, not exceeding five years next preceding the year in which the inquiries and corrections are made, all property omitted or not returned and taxed according to its true value in money.

Under the operation of this statute it was not material whether the property omitted, or not returned for taxation, was or was not in the county at the time the County Auditor was making his inquiries and corrections under said section. The inquiry instituted by such auditor was required to determine the fact as to what property was in the county, or should have been listed by the owner thereof, on the day preceding the second Monday in April. At the time that

such inquiry is instituted by the County Auditor, the statute requires that he list the property *for each year such property has been omitted or not returned for taxation*, not exceeding five years next preceding the date of such inquiry.

The constitutionality of legislation similar to that enacted in Section 2781*a* has been upheld in the cases of *Sturges v. Carter*, 114 U. S., 511-518; *Winona and St. Peter Land Co. v. Minnesota*, 159 U. S., 526; *Weyerhauser v. Minnesota*, 176 U. S., 550; *Gager v. Prout*, 48 Ohio St., 89.

CONCLUSION.

A demurrer was properly sustained to that part of the bill of complaint which sought to restrain the Treasurer from collecting the taxes charged upon the tax list of Franklin county, Ohio, by distraining the bonds belonging to the Scottish Union and National Insurance Company and by it deposited with the Superintendent of Insurance and Treasurer of State.

The bonds so deposited had a taxing situs within the State of Ohio. The State had a right to and did require this non-resident corporation to comply with all the laws of the State as a condition precedent to its being allowed to do business within its limits. Having agreed to the operation of all the laws of the State upon property brought within such State it can not now be heard to complain when the State seeks to enforce the obligation thereby assumed.

The power of a State to collect taxes assessed on account of personal property belonging to a non-resident having a taxing situs within its borders, is not dependent upon the ability of its taxing officers to find the identical property

taxed. Any property belonging to such non-resident if found within the State, may be subject to the payment of such tax.

The Fourteenth Amendment of the Constitution of the United States forbids any State to exercise powers extending beyond its own limits. It was not intended, however, to control the operation of State statutes upon persons or property within the territorial limits of such State. There is no claim that can be based upon the record in this case that the County Treasurer was about to proceed for the collection of the taxes charged in the name of The Scottish Union and National Insurance Company against any property not within his county. The statute under which he assumed to act authorized him to take only property which he found within his county belonging to the person in whose name taxes were charged. Neither the action of Willis G. Bowland, as County Treasurer, of Franklin county, Ohio, nor the statute by virtue of which he assumed to act were repugnant to the provisions of the Federal Constitution.

(19,460 and 19,461).

Supreme Court of the United States.

OCTOBER TERM, 1904.

WILLIS G. BOWLAND, AS TREASURER, AND L. EWING JONES, AS AUDITOR OF FRANKLIN COUNTY, OHIO, ET AL.,
APPELLANTS,

vs.

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY,
APPELLEE.

[No. 361.]

The appeal in cause No. 361, on behalf of Willis G. Bowland, as County Treasurer, L. Ewing Jones et al., was taken from that part of the decision of the court below:

(1) Overruling the demurrer to such parts of the bill of complaint as sought to enjoin the County Treasurer from collecting or attempting to collect the taxes as alleged in the bill, by civil action under the provisions of Section 2859 of the Revised Statutes.

(2) The finding by the court that the taxes assessed for the year 1903 were illegal and void.

I.

The Action of Bowland, as County Treasurer, in instituting a suit against the Scottish Union and National Insurance Company, under Section 2859, Revised Statutes, for the recovery of unpaid taxes, violates no provision of the Federal Constitution.

Although the decision of this branch of the case was not considered important by the court below by reason of the fact that the County Treasurer was allowed to proceed by distraint to collect the taxes charged, it was deemed best by the parties concerned to have the record show a ruling upon every question made by the pleadings. Upon a request to that effect (Record, p. 20) the court held that the County Treasurer could not proceed to collect, by civil action under this statute, taxes against a non-resident of the State.

If the Treasurer is allowed to proceed to collect said taxes under the authority conferred by Section 1095, Revised Statutes, there is no claim that said taxes can be collected more than once, and the question of the right to proceed under Section 2859, in that event, would become unimportant as applied to the rights of the parties to this suit.

The right to bring suit against the foreign insurance company against whom taxes are alleged to have been assessed in this case is based upon the statute of Ohio, Section 3657 (Appendix *c*), which requires every corporation organized under the laws of a foreign government *to consent to be sued, and to be served with summons in this State* as a condition to the right of such corporation to transact any business within the State.

Section 2859 of the Revised Statutes (Appendix *d*) does not of itself authorize a suit against a non-resident except jurisdiction be obtained over such non-resident under the general statutes of the State. The act of the Legislature embodied in Section 2859 imposed no new liability not otherwise provided by law upon non-residents of the State. No judgment could be rendered under said section against any defendant unless the statutes of Ohio relating to the venue of the action and the service of summons were complied with.

The courts of Ohio have always been alert to so construe statutes relating to actions against non-residents of the State as to protect the right of such non-resident and to comply with the requirements of the Federal Constitution. The Supreme Court of Ohio decided that the State Court could acquire no jurisdiction in an action against a non-resident unless he could be found and personally served, except the case be one in which service by publication could be made.

Williams' Admrs. v. Welton's Admr., 28 Ohio St., 451.

Jurisdiction over any defendant that is a foreign corporation can be obtained by a County Treasurer of Ohio in an action brought by virtue of Section 2859 of the Revised Statutes, solely by virtue of the provisions of Section 3657 (Appendix *e*).

In compliance with said Section 3657. The Scottish Union and National Insurance Company agreed to receive a particular mode of service in the State of Ohio and a judgment rendered in an action against it pursuant to the statute under which such agreement was made is as valid as though such corporation had been served personally.

A number of authorities have been cited in this brief (p.) to support the doctrine that a State has the right to prescribe any conditions it may see fit upon a non-resident of the State in return for the privilege allowed such non-resident to do business within its limits. In addition to what was said there we wish to quote the following authorities.

> "A foreign corporation comes into the State of Ohio to do business with its citizens, only with the consent of the State; that consent it may withhold altogether, or it may impose such conditions and restrictions which may appear to it reasonable to secure its citizens from imposition and fraud."
>
> *Paul v. Virginia*, 8 Wall., 168.
> *New York Life Ins. Co. v. Best*, 23 O. S., 105.

> "Upon the acceptance of this or other prescribed conditions such corporations become entitled to prosecute their business in the State—a right which could not be conferred by the law of their creation * * * In case they failed to comply with the prescribed conditions they are forbidden to transact any business of insurance in this State. The right of the State thus wholly to exclude them is well settled and is not denied."
>
> *New York Life Insurance v. Best*, 23 O. S., 105-113.

The true doctrine upon this subject is well stated in the case of Paul v. Virginia, 8 Wall., 168. Mr. Justice Field, in the opinion (page 181) says:

> "Having no absolute right of recognition in other States, but depending for such recognition and the enforcement of its contracts upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those States may think proper to impose. They may exclude the foreign corporations entirely; they may restrict its business to particular localities, or they may exact such security

> for the performance of its contracts with their citizens, as in their judgment will best promote the public interests. The whole matter rests in their discretion."

That the requirement of the appointment of an agent upon whom service may be had is a condition precedent, and that a valid service may be had upon such agent against a non-resident is decided in the case of *The American Express Company v. Johnson*, 17 O. S., 641. And upon the same point see *Railroad Co. v. Harris*, 12 Wall., 65; *ex parte Shallenberger*, 96 U. S., 377; *Doyle v. Continental Insurance Co.*, 94 U. S., 535; *Bromwell v. Railroad Co.*, 18 Blatchford, 243, and *Ben. Franklin Insurance Co. v. Gillet*, 54 Md., 212.

A statute in Ohio, practically like that embodied in Section 3657, Revised Statutes, to which we have called attention above was construed by the Supreme Court of the United States in the case of *Lafayette Insurance Co. v. French*, 18 Howard, 404.

The court said on page 408:

> "Nor do we think the means adopted to effect this object are open to the objection, that it is an attempt improperly to extend jurisdiction of the State beyond its own limits to a person in another State."

The principal authority relied upon by the complainant upon this branch of the argument is the case already discussed by us of *Dewey v. Des Moines*, 173 U. S., 193, by virtue of which it is contended that a non-resident can not be cast in a personal judgment by a State, for taxes levied against his property in the State. The decision in that case does not go to the extent claimed for it. As was stated by this court in the later decision of *Bristol v. Washington County*, 177 U. S., 133:

> "*Dewey v. Des Moines*, 173 U. S., 193, is not to the contrary. What was ruled there was that a citizen of one State can not be cast in a personal judgment in another State on an assessment levied there on real estate for local improvement without service on him, or voluntary appearance, or some action of his amounting to consent to jurisdiction."

In the opinion in the case of *Pennoyer v. Neff*, 95 U. S., 714, cited in the decision of *Dewey v. Des Moines* as a leading case upon the subject, it was stated by Mr. Justice Field, p. 735:

> "Neither do we mean to assert that a State may not require a non-resident entering into a partnership or association within its limits, or making contracts enforceable there, to appoint an agent or representative in the State to receive service of process and notice in legal proceedings instituted with respect to such partnership, association, or contracts, or to designate a place where such service may be made and notice given, and provide, upon their failure, to make such appointment or to designate such place that service may be made upon a public officer designated for that purpose, or in some other prescribed way, and that judgments rendered upon such service may not be binding upon the non-residents both within and without the State. As was said by the Court of Exchequer in *Vallee v. Dumergue*, 4 Exch., 290, 'It is not contrary to natural justice that a man who has agreed to receive a particular mode of notification of legal proceedings should be bound by a judgment in which that particular mode of notification has been followed, even though he may not have actual notice of them.' See also *The Lafayette Insurance Co. v. French et al.*, 18 How., 404, *and Gillespie v. Commercial Mutual Marine Insurance Co.*, 12 Gray (Mass.), 201."

The requirement of Section 3657 is not limited to actions based upon contracts of insurance, but requires a foreign corporation desiring to transact any business by an agent

in this State "to acknowledge service of process in this State for and in behalf of the company, consenting that service of process, mesne or final, upon any such agent, shall be taken and held to be as valid as if served upon the company according to the laws of this or any other State or country, waiving all claim or right of error by reason of such acknowledgment of service."

An action brought under Section 2859 against a foreign corporation which had consented to service of summons in accordance with the provisions of said statute 3657 would not in any way violate the provisions of the Federal Constitution. For all purposes of a suit under said Section 2859, said foreign corporation has consented to the jurisdiction of the courts of the State of Ohio. The right of the State to require such non-resident to submit to the jurisdiction of the State arising by virtue of such non-resident being permitted to do business within the State of Ohio is unquestioned. Having complied with Section 3657, Revised Statutes, and having agreed to receive service in the manner prescribed therein, service had upon the agent designated is as good as personal service upon the non-resident in its own country. And by complying with said section it has waived the right to object to such service or the jurisdiction of the Ohio courts in an action arising by virtue of the laws of the State of Ohio, and in connection with business done under the protection of said State.

This court upheld the right of the State of Pennsylvania to bring suit in the Court of Common Pleas of one of its counties to recover the amount of a tax levied on account of property owned by a non-resident of the State and resident of the State of Illinois, in the case of *Pullman's Palace Car*

Co. v. Pennsylvania, 141 U. S., 18. In that case the Pullman's Palace Car Company was a corporation of Illinois, having its principal office in Chicago. A tax was levied on account of personal property owned by said company being used in the State of Pennsylvania. The taxes were levied under certain statutes of the State of Pennsylvania, authorizing a tax upon the property of non-resident corporations. A suit was brought by the State of Pennsylvania in the Court of Common Pleas of the county of Dauphin, Pennsylvania, for the amount of taxes so assessed for the years 1870 to 1880, inclusive. Judgment was rendered in favor of the State for the amount of tax, and affirmed by the Supreme Court of the State of Pennsylvania. Pullman's Palace Car Company sued out a writ of error from this court to the Supreme Court of Pennsylvania, and the decision of the Supreme Court of Pennsylvania was affirmed. The point urged in that case was that the action of the State of Pennsylvania in taxing the property of the Pullman's Palace Car Company was an interference with property employed in interestate commerce. The right, however, of the State of Pennsylvania to maintain an action for the recovery of the amount of the tax as a personal claim against the non-resident corporation, on account of taxes levied and assessed upon personal property having a taxing situs within that State, must have been upheld by this court in that case.

II.

The right of a State under Section 2737 to tax bonds which have been exchanged for non-taxable securities prior to the day preceding the second Monday in April for the year subsequent to the time such bonds are so exchanged.

It was alleged in the bill of complaint (Record, p. 4):

> "Under the statute of Ohio, that only personal property in Ohio, and moneys, credits and investments in bonds, in the possession or under the control of persons residing in Ohio on the twelfth day of April, 1903, were returnable in said State for taxation for the year 1903."

Taxes for the year beginning April 12, 1903, were levied on account of the bonds owned by The Scottish Union and National Insurance Company having been withdrawn from the State on the second day of April, 1903, and in their place non-taxable bonds of the United States having been substituted. The only authority for the levy of taxes on account of such bonds for the year 1903 was that part of Section 2737, Revised Statutes (Appendix *f*), which reads as follows:

> "Such statement (listing property for taxation) shall truly and distinctly set forth * * * 16th: the monthly average amount or value, for the time he held or controlled the same, within the preceding year, of all moneys, credits, or other effects, within that time invested in, or converted into bonds, or other securities of the United States or of this State, not taxed, to the extent he may hold or control such bonds or securities on said day preceding the second Monday in April."

The provisions of law above quoted were under consideration by this court in the case of *Shotwell v. Moore*, 129 U. S., 590, where it was decided that:

> "Section 2737 of the Revised Statutes of Ohio, which requires the taxpayer to return to the assessor, as of the day preceding the second Monday in April of each year, among other things a statement of 'the monthly average, amount or value, for the time he held or controlled the same, within the preceding year, of all moneys, credits, or other effects, within that time invested in, or converted into bonds or other securities of the United States or of this State, not taxed, to the extent he may hold or control such bonds or securities on said day preceding the second Monday of April, and any indebtedness created in the purchase of such bonds or credits shall not be deducted from the credits under the fourteenth item of this section,' does not tax the citizen for the greenbacks or other United States securities which he may have held at any time during the year, but taxes him upon the moneys, credits, or other capital which he has had and used, according to the average monthly amounts so held and is not in conflict with Section 3701 of the Revised Statutes of the United States, exempting the obligations of the United States from taxation under State, municipal or local authority."

On page 600 of the opinion, it is said:

> "Of the right of the State of Ohio to make this provision we have no doubt. Its purpose is not to enable that State to tax the securities of the United States, but to permit it to tax other investments, moneys on hand and on deposit, subject to order, while it combines in the same exemption the securities of the general government and of the State. We know of no principle which forbids the State from taking the whole period of a business year already passed as the best means of ascertaining how much the taxpayer shall be required to pay on property which is admitted to be taxable and how much he shall deduct from the non-taxable securities of the State and of the United States."

The only claim that can be made in favor of the right of the State to tax the bonds of the Insurance Company which had been removed from the State of Ohio prior to the day preceding the second Monday of April for 1903, is that the moneys invested in the bonds so controlled by said Insurance Company prior to the thirteenth of April, 1903, were invested in or converted into bonds of the United States and non-taxable as such when said municipal bonds were removed from the State and such federal bonds substituted in their place.

The question turns entirely upon the construction of that part of Section 2737 of the Revised Statutes of Ohio above quoted and unless the statement of fact in the bill of complaint brings that transaction within the letter of said statute, it must be conceded that such bonds were exempt from taxation for the year 1903.

Respectfully submitted,

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WADE H. ELLIS,
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APPENDIX

(A)

Sec. 3660. [*Certain companies must make deposit.*] A company incorporated by or organized under the laws of a foreign government shall deposit with the superintendent of insurance, for the benefit and security of its policy holders residing in this State, a sum not less than one hundred thousand dollars in stocks or bonds of the United States, or the State of Ohio, or any municipality or county thereof, which shall not be received by the superintendent at a rate above their par value; the stocks and securities so deposited may be exchanged from time to time for other like securities; so long as the company so depositing continues solvent and complies with the laws of this State, it shall be permitted by the superintendent to collect the interest or dividends on such deposits; and for the purposes of this chapter the capital of any foreign company doing fire insurance business in this State shall be deemed to be the aggregate value of its deposits with the insurance or other departments of this State and of the other States of the United States, for the benefit of policy holders in this State or in the United States, and its assets and investments in the United States certified according to the provisions of this chapter; but such assets and investments must be held within the United States and invested in and held by trustees, who must be citizens of the United States, appointed by the board of directors of the company and approved by the insurance commissioner of the State where invested,

for the benefit of the policy holders and creditors in the United States; and the trustees so chosen may take, hold and convey real and personal property for the purpose of the trust, subject to the same restrictions as companies of this State. [91 v. 40; 70 v. 147, § 21; (S. & S. 212).]

(B)

Sec. 2781*a*. [*Action of auditor upon omission of tax return.*] If any person whose duty it is to list property, or to make a return thereof, for taxation to the assessor or county auditor, or to any board, officer, or person, other than a board composed of officers of more than one county shall in any year or years fail to make a return or statement, or if such person shall make a return or statement of only a portion of his taxable property, and fail to make a return as to the remainder thereof, or if he shall fail to return his taxable property or any part thereof, according to the true value thereof in money, as provided by law, the county auditor shall for each year, as to such property omitted and as to property not returned or taxed according to its true value in money, ascertain as near as practicable the true amount of personal property, moneys, credits, and investments that such person ought to have returned or listed, and the true value at which the same should have been taxed in his county for not exceeding the five years next preceding the year in which the inquiries and corrections provided for in this section and in Sections 2781 and 2782 of the Revised Statutes, are made, and multiply the omitted sum or sums by the rate of taxation belonging to said year or years, and accordingly enter the same on the tax lists in his office, giving a certificate therefor to the county treasurer, who shall collect the same as other taxes. The term "personal

property," as used in this section, shall be held to apply to all kinds of omitted property for the taxation of which, for any of the years in which it was omitted, provision has not been made by law. * * * [94 v. 62.]

(C)

Sec. 1095. [*Overdue taxes may be collected by distress.*] When taxes are past due and unpaid, as stated in the preceding section, the county treasurer, or his deputy, may distrain sufficient goods and chattels belonging to the person or persons charged with such taxes, if found within his county, to pay the taxes so remaining due and the costs that have accrued; and shall immediately proceed to advertise the same in three public places in the township where such property was taken, stating the time when, and the place where, such property will be sold; and if the taxes and costs which have accrued thereon, are not paid before the day appointed for such sale, which shall be not less than ten days after the taking of such property, such treasurer, or his deputy, shall proceed to sell such property at public vendue, or so much thereof as will be sufficient to pay said taxes, and the costs of such distress and sale. [29 v. 291, Sec. 19; S. & C. 1586.]

(D)

Sec. 2859. [*Authority of the treasurer; mode of procedure; judgment shall be rendered.*] When any personal taxes, heretofore or hereafter levied, shall stand charged against any person, and the same shall not be paid within the time prescribed by law for the payment of such taxes, the treasurer of such county, in addition to any other remedy provided by law for the collection of such personal taxes, is hereby specially authorized and empowered to

enforce the collection by a civil action in the name of the treasurer of such county against such person for the recovery of such unpaid taxes; and it shall be sufficient, having made proper parties to the suit, for such treasurer to allege in his bill of particulars or petition that the said taxes stand charged upon the said duplicate of said county against such person, that the same are due and unpaid, and that such person is indebted in the amount appearing to be due on said duplicate, and such treasurer shall not be required to set forth in his petition any other or further special matter relating thereto, and said tax duplicate shall be received as prima facie evidence on the trial of said suit of the amount and the validity of such taxes appearing due and unpaid thereon, and of the non-payment of the same, without setting forth in his bill of particulars or petition any other or further special matter relating thereto; and if, on the trial of the action, it shall be found that such person is so indebted, judgment shall be rendered in favor of such treasurer so prosecuting such action as in other cases; and the judgment debtor shall not be entitled to the benefit of the laws for stay of execution or exemption of homestead, or any other property from levy or sale on execution in the enforcement of any such judgment. [74 v. 69, Sec. 1.]

(E)

Sec. 3657. [*The waiver companies must file.*] Any such company desiring to transact any business by an agent in this State, shall file with the superintendent a written instrument, duly signed and sealed, authorizing any agent of the company in this State to acknowledge service of process in this state for and in behalf of the company, consenting that service of process, mesne or final, upon any such agent,

shall be taken and held to be as valid as if served upon the company according to the laws of this or any other State or country, waiving all claim or right of error by reason of such acknowledgment of service, and consenting that suit may be brought against it in the county where the property insured was situate, or where the same was insured, and that service of process made therein by the sheriff of such county, by sending a copy thereof by mail, addressed to the company at the place of its principal office located in the State where it was organized, or, if it is a foreign company, to such company at the place of its principal office in the United States, at least thirty days prior to taking judgment in such suit, shall be as valid as if personally made upon the company according to the laws of this State, or any other State or Government, and that if suit be brought against it after it ceases to do business in this State as aforesaid, and there be no agent of the company in the county in which suit is brought upon whom service of process can be had, service upon it may be had by the sheriff sending a copy thereof, mailed as aforesaid, and within the time aforesaid; but the sheriff's return shall show the time and manner of such service. [75 v. 572, Sec. 20.]

(F)

Sec. 2737. [*What the statement shall contain, and in what order.*] Such statement shall truly and distinctly set forth, first, the number of horses, and the value thereof; second, the number of meat cattle, and the value thereof; third, the number of mules and asses, and the value thereof; fourth, the number of sheep, and the value thereof; fifth, the number of hogs, and the value thereof; sixth, the number of pleasure carriages (of whatever kind), and the value

thereof; seventh, the total value of all articles of personal property, not included in the preceding or succeeding classes; eighth, the number of watches, and the value thereof; ninth, the number of piano fortes and organs, and the value thereof; tenth, the average value of the goods and merchandise, which such person is required to list as a merchant; eleventh, the value of the property which such person is required to list as a banker, broker, or stock-jobber; twelfth, the average value of the materials and manufactured articles which such person is required to list as a manufacturer; thirteenth, moneys on hand or on deposit subject to order; fourteenth, the amount of credits as hereinbefore defined; fifteenth, the amount of all moneys invested in bonds, stocks, joint stock companies, annuities, or otherwise; sixteenth, the monthly average amount or value, for the time he held or controlled the same, within the preceding year, of all moneys, credits, or other effects, within that time invested in, or converted into bonds or other securities of the United States or of this State, not taxed, to the extent he may hold or control such bonds or securities on said day preceding the second Monday of April; and any indebtedness created in the purchase of such bonds or securities shall not be deducted from the credits under the fourteenth item of this section; but the person making such statement may exhibit to the assessor the property covered by the first nine items of this section, and allow the assessor to affix the value thereof, and in such case the oath of the person making the statement shall be in that regard only that he has fully exhibited the property covered by said nine items. [56 v. 175, Sec. 7; 65 v. 38, Sec. 6; S. & C. 1442; S. & S. 758.]

(G)

Sec. 2744. [*Corporations generally; their returns.*] The president, secretary, and principal accounting officer of every canal or slackwater navigation company, turnpike company, plank-road company, bridge company, insurance company, telegraph company, or other joint stock company, except banking, or other corporations whose taxation is specifically provided for, for whatever purpose they may have been created, whether incorporated by any law of this State or not, shall list for taxation, verified by the oath of the person so listing, all the personal property, which shall be held to include all such real estate as is necessary to the daily operations of the company, moneys and credits of such company or corporation within the State, at the actual value in money, in manner following: In all cases return shall be made to the several auditors of the respective counties where such property may be situated, together with a statement of the amount of said property which is situated in each township, village, city, or ward therein. The value of all movable property shall be added to the stationary and fixed property and real estate, and apportioned to such wards, cities, villages, or townships, pro rata, in proportion to the value of the real estate and fixed property in said ward, city, village, or township, and all property so listed shall be subject to and pay the same taxes as other property listed in such ward, city, village, or township. It shall be the duty of the accounting officer aforesaid to make return to the auditor of state during the month of May of each year of the aggregate amount of all property by him returned to the several auditors of the respective counties in which the same may be located. It shall be the duty of the

auditor of each county, on or before the first Monday of May, annually, to furnish the aforesaid president, secretary, principal accounting officer, or agent, the necessary blanks for the purpose of making aforesaid returns; but no neglect or failure on the part of the county auditor to furnish such blanks shall excuse any such president, secretary, principal accountant, or agent, from making the returns within the time specified herein. If the county auditor to whom returns are made is of the opinion that false or incorrect valuations have been made, or that the property of the corporation or association has not been listed at its full value, or that it has not been listed in the location where it properly belongs, or in cases where no return has been made to the county auditor, he is hereby required to proceed to have the same valued and assessed: provided, that nothing in this section shall be so construed as to tax any stock or interest in any joint stock company held by the State. [73 v. 139, § 16; (S. & C. 1446).]

(H)

Sec. 2734. [*Who shall list personal property.*] Every person of full age and sound mind shall list the personal property of which he is the owner, and all moneys in his possession, all moneys invested, loaned or otherwise controlled by him, as agent or attorney, or on account of any other person or persons, company or corporation whatsoever, and all moneys deposited subject to his order, check, or draft, and all credits due or owing from any person or persons, body corporate or politic, whether in or out of such county; all money loaned on pledge or mortgage of real estate, although a deed or other instrument may have been given for the same, if between the parties the same is con-

sidered as security merely; the property of every ward shall be listed by him, of every minor child, idiot, or lunatic having no guardian, by his father, if living; if not, by his mother, if living; and if neither father nor mother be living, by the person having such property in charge; of every wife by her husband, if of sound mind, if not, by herself; of every person for whose benefit property is held in trust, by the trustees; of every estate of a deceased person, by his executor or administrator; of corporations whose assets are in the hands of receivers, by such receivers; of every company, firm, or corporation, by the president or principal accounting officer, partner or agent thereof; and all surplus or undivided profits held by any society for savings or bank having no capital stock, by the president or principal accounting officer. [62 v. 105, Sec. 4; 75 v. 441, Sec. 1; 76 v. 28, Sec. 2; S. & S. 756; S. & C. 1441.]

(I)

Sec. 2735. [*Where personal property shall be listed.*] Every person required to list property on behalf of others shall list the same in the same township, city, or village in which he would be required to list it if such property were his own; but he shall list it separately from his own, specifying in each case the name of the person, estate, company, or corporation, to whom it belongs; all merchants' and manufacturers' stock, and all personal property upon farms shall be listed in the township, city, or village in which the same may be situated; and all other personal property, moneys, credits, and investments, except as otherwise specialy provided, shall be listed in the township, city, or village in which the person to be charged with taxes thereon may reside at the time of the listing thereof, if such person

reside within the county where the same are listed, and if not, then in the township, city, or village where the property is when listed. [62 v. 105, Sec. 4; S. & S. 756.]

(J)

Sec. 1091. [*Taxes: when to be paid.*] Each person charged with taxes on a tax duplicate, in the hands of a county treasurer, may pay the full amount of such taxes on or before the twentieth day of December, or one-half thereof on or before the twentieth day of December, and the remaining half thereof on or before the twentieth day of June next ensuing; but all road taxes so charged, shall be paid prior to the twentieth day of December. [56 v. 101, Sec. 1; S. & C 1475.]

(K)

Sec. 2746. [*In whose name property to be listed; but stock in companies which make return of capital not to be listed by shareholder.*] Personal property of every description, moneys and credits, investments in bonds, stocks, joint stock companies, or otherwise, shall be listed in the name of the person who was the owner thereof on the day preceding the second Monday of April, in each year; but no person shall be required to list for taxation any share or shares of the capital stock of any company, the capital stock of which is taxed in the name of such company. [56 v. 175, Sec. 59; S. & C. 1460.]

(L)

Sec. 2745. [*Returns by foreign insurance companies.*] Every agency of an insurance company incorporated by the authority of any other state or government, shall return to the auditor of each county in which such company does business, or from which it collects premiums on or before

the first day of May, annually, the amount of the gross premium receipts of such agency for the previous calendar year in such counties; provided, however, that in the case of regular companies, wherein policy holders participate in the surplus and earnings of the company, dividends or surplus from previous payments allowed and used in the payment of current premiums, cancellations or surrender values, and commissions paid to the citizens of this state, during the same period for which receipts are reported, shall be deducted from such gross receipts, and the net amount after such deductions shall be the basis of taxation for such companies in the counties, which shall be entered upon the tax list of the proper county, and be subject to the same rate of taxation, for all purposes, that other personal property is subject to at the place where located; and the whole of said tax shall be due and payable on the twentieth day of November next ensuing. And it shall be the duty of the superintendent of insurance, in the month of December, annually, to charge and collect from all such companies such a sum as, added to the sum paid to the county treasuries, will produce an amount equal to two and one-half per cent. on the gross premium receipts of such companies, as shown by their annual statements, under oath, to the insurance department; provided, however, that if, by the laws of any other state, territory or nation, a larger tax than two and one-half per cent. on such gross premium receipts is charged companies organized under the laws of Ohio, then the superintendent of insurance shall charge a like tax upon companies from such state, territory or nation doing business in this state. If any such company refuse to pay said tax, after demand therefor has been made, or if it shall make any false statement of its gross premium receipts, the

superintendent of insurance shall revoke the license of such company to do business in this state. If, at any time, said superintendent has reason to suspect the correctness of the return make (made) of the gross premium receipts of any such company he may, at the expense of the state, make an examination of the books of such company, or of its agents, for the purpose of verifying the same. All taxes collected under the provisions of this section by the superintendent of insurance shall be paid by him, upon the warrant of the auditor, into the general revenue fund of the State. [91 v. 91; 90 v. 201; 86 v. 274; 85 v. 183; Rev. Stat. 1880; 73 v. 139, Sec. 16.] (This section has since been amended by the Legislature of Ohio, but such amendment was passed subsequent to the levy of all taxes involved in this case.)

(M)

Sec. 1094. [*Effect of not paying taxes at times prescribed.*] When one-half of the taxes, as aforesaid, charged against any entry, on a tax duplicate in the hands of a county treasurer, is not paid on or before the twentieth day of December next, after the same has been so charged, or when the remainder of such taxes is not paid on or before the twentieth day of June next thereafter, the county treasurer shall proceed to collect the same by distress or otherwise, together with a penalty of five per centum on the amount of taxes so delinquent, (which penalty shall be for the use of the treasurer as a compensation for such collection); and in all cases where such half of any taxes, other than on real estate, has not been paid on the twentieth day of December, the whole amount of taxes, other than real estate, for the current year, so charged, shall be due and delinquent, and shall be collected in the manner and with the penalty provided in this section. [56 v. 101, Sec. 4; S. & C. 1476.]

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